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Printcraft Press v. Sunnyside Park Utilities Clerk's Record v. 6 Dckt. 36556

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Vol. 6 of 27

LAW CLERK

IN THE

volume 6

SUPREME COURT

OF THE

STATE OF IDAHO

PRINTCRAFT PRESS, INC.

Plaintiff and

Respondent/Cross Appellant

vs.

SUNNYSIDE PARK UTILITIES, INC., etal

Defendant and

Appellant/Cross Respondent

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

Hon. Joel E. Tingey, District Judge

Mark Fuller P.O. Box 50935, Idaho Falls, ID 83405

Bryan Smith P.O. Box 50731, Idaho Falls, ID 83405

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Attorney for Respondent-Cross Appellant

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Filed this MAY 14 2010

Supreme Court Court of Appeals
Idaho State An Attorney

36567

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Deputy

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IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an Idaho
corporation,

Plaintiff,

vs.

SUNNYSIDE UTILITIES, INC., and Idaho
Corporation, SUNNYSIDE PARK OWNERS
ASSOCIATION, INC., and Idaho Corporation,
and SUNNYSIDE INDUSTRIAL AND
PROFESSIONAL PARK, LLC, and Idaho
limited liability corporation,

Defendants.

Case No. CV-06-7097

**MEMORANDUM DECISION
AND
ORDER**

I. FACTUAL AND PROCEDURAL BACKGROUND

Sunnyside Utilities, Inc. (Sunnyside) and Printcraft Press, Inc. (Printcraft) have been involved in an ongoing dispute involving the availability and proper usage of a sewer system that had previously been connected to the property of which Printcraft is the current lessee. Sunnyside alleges that after Printcraft first began occupying the property in January of 2006, it discharged hazardous materials and excessive amounts of water into Sunnyside's sewer system. Count 1 of Sunnyside's counterclaim makes the following allegation:

Plaintiff breached the contract by discharging water softener brine, hazardous chemicals, substances that are harmful to Defendant's sewer facilities, inks, and excessive flow of discharges.

Answer to Amended Complaint, Amended Counterclaims, ¶ 33.

Sunnyside now seeks summary judgment on Count 1 of its Counterclaim primarily relying upon an exchange of letters between the Parties. On September 20, 2006, counsel for Sunnyside sent a letter to counsel for Printcraft that states in relevant part:

Sunnyside Park Utilities will continue to accept sewer water, but will not accept process wastewater. Sunnyside Park Utilities will not participate in violation of Idaho law. Therefore, Printcraft Press must cease any flows of process water into the system by 5:00 p.m. September 22, 2006. If Printcraft does not cease injecting excess wastewater and process wastewater, absent a court order, Sunnyside Utilities will be forced to physically disconnect all flows from Printcraft Press, and will seek to recover all damages which result from Printcraft Press's actions. These issues are not negotiable.

Beck Aff. Ex. A.

On September 25, 2006, representatives from Printcraft and Sunnyside met with counsel for Sunnyside to discuss how to remedy the dispute. The following day, counsel for Printcraft sent a letter to Sunnyside's counsel, which states in relevant part:

In following up to our meeting, Travis Waters has informed me that he had an additional conversation with Doyle Beck yesterday evening about 7:00 p.m. Travis agreed with Doyle that Printcraft Press will no longer be putting the RO water into the sewer system. Additionally, Travis agreed to make arrangements to collect and dispose of what you classify as "processed waste."

Beck Aff. Ex B.

Sunnyside has moved for summary judgment on its breach of contract counterclaim primarily arguing that the September 20, 2006 letter constituted an offer by Sunnyside which was accepted through the September 26, 2006 letter. Sunnyside further argues that Printcraft breached that contract when it continued to discharge water softener brine, hazardous wastes, processed water and excessive flows of wastewater into the sewer system and that as a result of those discharges Sunnyside suffered damages in the

amount of \$2,648.64 when it was forced to physically sever the sewer connection to Printcraft's property.

II. STANDARD OF ADJUDICATION

A motion for summary judgment "shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), I.R.C.P.; *Orthman v. Idaho Power Co.*, 130 Idaho 597, 600, 944 P.2d 1360, 1363 (1997). Upon considering a motion for summary judgment, all controverted facts are liberally construed in favor of the non-moving party. *Friel v. Boise City Housing Authority*, 126 Idaho 484, 485, 887 P.2d 29 (1994). Where a jury will decide the facts at trial, the court must draw all reasonable factual inferences and conclusions in favor of the non-moving party. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 529, 887 P.2d 1034, 1036 (1994). In ruling on a motion for summary judgment, the district court is not permitted to weigh the evidence or to resolve controverted factual issues. *Bybee v. Clark*, 118 Idaho 254, 257, 796 P.2d 131, 134 (1990).

The party moving for summary judgment always bears the burden of proving that no genuine issue of material fact exists on an element of the non-moving party's case. If the moving party fails to challenge an element or fails to present evidence establishing the absence of a genuine issue of material fact on that element, the burden does not shift to the non-moving party, and the non-moving party is not required to respond with supporting evidence. *Orthman v. Idaho Power Co.*, at 600, 944 P.2d at 1363.

If the moving party has met its burden by either an affirmative showing of the moving party's evidence or by a review of the non-moving party's evidence, the burden shifts to the non-moving party to establish that a genuine issue for trial does exist. *Id.*; *Navarrette v. City of Caldwell*, 130 Idaho 849, 851, 949 P.2d 597, 599 (1997). To withstand a motion for summary judgment, the non-moving party's case must be anchored in something more than speculation; a mere scintilla of evidence is not enough to create a genuine issue. *Nelson, A.I.A. v. Steer*, 118 Idaho 409, 410, 797 P.2d 117, 118 (1990); *Zimmerman v. Volkswagen of America, Inc.*, 128 Idaho 851, 854, 920 P.2d 67, 70 (1996).

III. ANALYSIS

Sunnyside claims that the September 20, 2006 and September 26, 2006 letters formed a valid contract between Sunnyside and Printcraft setting forth the terms under which Printcraft was permitted to utilize Sunnyside's sewer system. Initially, the Court will consider whether the alleged contract is sufficiently definite in its terms to allow enforcement.

Case law has held that a contract is unenforceable if it is not "complete, definite and certain in all its material terms, or contain[s] provisions which are capable in themselves of being reduced to certainty." *General Auto Parts Co., Inc. v. Genuine Parts Co.*, 132 Idaho 849, 857, 979 P.2d 1207, 1215 (1999) (quoting *Giacobbi Square v. PEK Corp.*, 105 Idaho 346, 348, 670 P.2d 51, 53 (1983)). Although absolute certainty is not required relative to every detail of the contract, "the agreement must be sufficiently definite and certain in its terms and requirements so that it can be determined what acts are to be performed and when performance is complete". *Bajrektarevic v. Lighthouse*

Home Loans, Inc., 143 Idaho 890, 155 P.3d 691, 693 (2007). "[W]here a phrase of contract ... is reasonably capable of different interpretations ... there is no contract."

Konic Int'l Corp. v. Spokane Computer Services, Inc., 109 Idaho 527, 529, 708 P.2d 932, 934 (Ct. App. 1985) (quoting 1 S. WILLISTON, CONTRACTS § 95 (3d ed. 1957)).

"Formation of a contract is generally a question of fact for the trier of fact to resolve."

Inland Title Co. v. Comstock, 116 Idaho 701, 702, 779 P.2d 15, 16 (1989). "In a dispute over contract formation it is incumbent upon the plaintiff to prove a distinct and common understanding between the parties." *Id.* at 703, 779 P.2d at 17.

While the September 20, 2006 and September 26, 2006 letters could conceivably constitute an offer and acceptance, there is a genuine issue of material fact of whether the terms of that alleged contract are sufficiently definite and certain to be enforceable. Instructive is the case *Black Canyon Racquetball Club, Inc. v. Idaho First Nat'l Bank*, 119 Idaho 171, 804 P.2d 900 (1991). In *Black Canyon Racquetball Club*, the plaintiff claimed that a contract existed in which Idaho First National Bank agreed to issue a loan to the plaintiff in order to expand and remodel its health club as soon as the plaintiff had sold 150 memberships. *Id.* at 172, 804 P.2d at 901. The Idaho Supreme Court affirmed the district court's findings that the terms of the alleged contract were not sufficiently definite to be legally enforceable. *Id.* at 173, 804 P.2d at 902. Specifically, the court found that the contract term specifying the principal amount to be borrowed was an indefinite term since that amount was subject to increase or decrease. *Id.* at 174, 804 P.2d at 903. In addition, the provision specifying the interest rate as the "market rate" was an indefinite term since it was subject to various meanings, such as "mortgage rate," or "prime rate" and did not specify which market it attached to. *Id.* Also, the term

specifying that the loan was to be issued when 150 memberships were sold was indefinite because it didn't specify the type of memberships to be sold, such as "full-family lifetime," "fitness-only," or "student" memberships. *Id.*

The September 20, 2006 and September 26, 2006 letters are vague and incomplete regarding what exact discharges into the sewer system are permissible by Printcraft. Furthermore, the term "processed waste," like the term "market rate" in *Black Canyon Racquetball Club*, was not fully defined in the letters and does not have a clear meaning for purposes of this motion. Where the parties to the alleged agreement claim to attach different meanings to the term, it is impossible for the Court to rule as a matter of law on whether such a contract has been breached.

There is also controverted evidence and a genuine issue of material fact regarding the significance of the September 25, 2006 meeting between Printcraft and Sunnyside. Printcraft claims that at that meeting it demonstrated each process it was performing at its printing facility and that Sunnyside made several suggestions to either eliminate certain discharges or change the location of those discharges. Printcraft asserts that the September 26, 2006 letter relates to the discussions of the previous day rather than a direct response to the September 20, 2006 letter. "A prerequisite to the valid formation of a contract is a meeting of the minds as evidenced by a manifestation of mutual intent to contract". *Bajrektarevic*, supra, at 693. The testimony of Travis Waters at the time of his deposition creates a factual issue as to the discussions and possible agreements made on September 25, 2006, to which the September 26, 2006 letter may have been referring.

Construing all controverted facts and reasonable inferences in favor of the non-moving party, a genuine issue of material fact has been raised as to whether a contract was formed as a result of the September 20, and September 26, 2006 letters.

As an aside, the analysis of the September 25, 2006 meeting does not violate the strictures of the parol evidence rule. The parol evidence rule precludes extrinsic evidence as to a clear and unambiguous contract. However, when considering whether a contract has even been formed, the rule does not apply. *Mitchell v. Barendregt*, 120 Idaho 837, 820 P.2d 707, 120 Idaho 837 (Ct.App. 1991); *International Engineering Co., Inc. v. Daum Industries, Inc.*, 102 Idaho 363 630 P.2d 155 (Idaho 1981). Additionally, as previously indicated, ambiguous contracts are also not subject to the parol evidence rule. *Simons v. Simons*, 134 Idaho 824, 828, 11 P.3d 20, 24 (2000).

However, a ruling that the September 20 and September 26 letters did not, as a matter of law, create a contract does not however end the inquiry as to whether there was a breach of contract. While this issue was not directly before the Court when it entered its August 31, 2007 Memorandum Decision and Order, many of the findings and rulings nevertheless apply.

When considering the course of conduct between the Parties, there was at least an implied in fact contract whereby Sunnyside would provide services to Printcraft by receiving waste.

"An implied in fact contract is defined as one where the terms and existence of the contract are manifested by the conduct of the parties with the request of one party and the performance by the other often being inferred from the circumstances attending the performance." *Farnworth v. Femling*, 125 Idaho 283, 287, 869 P.2d 1378, 1382 (1994) (citing *Clements v. Jungert*, 90 Idaho 143, 153, 408 P.2d 810, 815 (1965)). The implied-in-fact contract is grounded in the parties' agreement and tacit understanding. *Kennedy v. Forest*, 129 Idaho 584, 587, 930 P.2d 1026, 1029 (1997). "The general rule is that where the conduct of the parties allows the dual inferences that one performed at the other's request and that the requesting party promised payment, then the court may find a contract implied in fact."

Homes by Bell-Hi, Inc. v. Wood, 110 Idaho 319, 321, 715 P.2d 989, 991 (1986) (citing *Clements v. Jungert*, 90 Idaho 143, 153, 408 P.2d 810, 815 (1965); *Bastian v. Gafford*, 98 Idaho 324, 325, 563 P.2d 48, 49 (1977)).

Fox v. Mountain West Elec., Inc., 137 Idaho 703, 708, 52 P.3d 848, 853 (2002).

For purposes of considering Sunnyside's motion and Count 1 of the Counterclaim, it is not critical or necessary to determine what was said at various discussions, or whether the Parties had a mutual understanding of the term "processed waste". At a minimum, the implied in fact contract precluded a discharge of waste which would be unlawful.

Existing law becomes part of a contract, just as though the contract contains an express provision to that effect, unless a contrary intent is disclosed. *Robinson v. Joint School Dist. No. 150*, 100 Idaho 263, 596 P.2d 436 (1979).

Primary Health Network, Inc. v. State, Dept. of Admin., 137 Idaho 663, 52 P.3d 307, 310 (2002).

The Court followed this rule in *Long v. Owen*, 21 Idaho 243, 121 P. 99 (1912) in stating:

Where one contracts to do a piece of work and there is at the time an existing law prescribing the specifications for that kind of work and requiring that all such work be done in accordance with the statute or ordinance, as the case may be, the statute or ordinance becomes a part of the contract, and the one who undertakes to do such work impliedly agree to do it in such a manner as to meet the requirements of law.

Id. at 245, 121 P. at 100.

Star Phoenix Min. Co. v. Hecla Min. Co., 130 Idaho 223, 230, 231, 939 P.2d 542, 549, 550 (1997).

This Court has held that "it is axiomatic that extant law is written into and made a part of every written contract." *Fidelity Trust Co. v. State*, 72 Idaho 137, 237 P.2d 1058 (1951). See also *Long v. Owen*, 21 Idaho 243, 121 P. 99 (1912). It appears to be the law in almost every state, if not all, that existing law becomes part of a contract, just as though the contract contains an express provision to that effect (unless a contrary intent is disclosed).

Robinson v. Joint School Dist. No. 150, 100 Idaho 263, 265, 596 P.2d 436, 438 (1979).

As a corollary to the foregoing, and as previously noted by the Court, the Parties could not enter into an agreement which would allow an unlawful discharge of waste.

Where this Court has previously held that Printcraft was discharging waste in violation of law (specifically, IDAPA 58.01.03.004.03) and as such Sunnyside was justified in terminating the septic service, it logically follows and the Court concludes that Printcraft breached the implied in fact contract by discharging such waste.

As to damages arising from the breach, Sunnyside filed the Affidavit of Doyle Beck wherein Beck testified that the cost of renting a backhoe and performing the disconnection cost \$1,228.64. (Affidavit of Doyle Beck, ¶ 6). Paragraph 7 of said Affidavit also identified costs of \$1,420 for supervision and inspection of the disconnect. While the Court previously denied Printcraft's motion to strike these paragraphs of the affidavit, upon further review the Court finds that Paragraph 7 of the Affidavit is without sufficient foundation to support an award of damages. The Court does find that Sunnyside is entitled to recover the cost of the backhoe rental in the amount of \$1,228.64.

IV. CONCLUSION AND ORDER

Based on the foregoing, Sunnyside's motion as to Count 1 of the Counterclaim is granted. Sunnyside is further entitled to recover \$1,228.64 on that claim.

DATED this 23 day of April, 2008.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 29 day of April, 2008, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

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Michael D. Gaffney
Lance J. Shuster
Jeffrey D. Brunson
Beard St. Clair Gaffney
2105 Coronado St.
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RONALD LONGMORE
Clerk of the District Court
Bonneville County, Idaho

By 
Deputy Clerk

BONNEVILLE COUNTY

APR 24 PM 2:28

Michael D. Gaffney, ISB No. 3558
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Attorney for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE UTILITIES, INC., an Idaho
corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual,

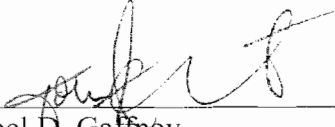
Defendants/Counterclaimants.

Case No.: CV-06-7097

PLAINTIFF'S MOTION TO AMEND TO
ALLEGE PUNITIVE DAMAGES

The plaintiff, Printcraft Press, Inc., through counsel of record, Beard St. Clair Gaffney PA, respectfully moves this Court pursuant to Idaho Code Section 6-1604(2) for an order allowing it to amend its complaint to include a claim for punitive damages against the defendants. This motion is supported by a memorandum of law and affidavits submitted concurrently herewith. Oral argument is requested.

DATED: April 24, 2008.



Michael D. Gaffney
Lance J. Schuster
Jeffrey D. Brunson
John M. Avondet
Beard St. Clair Gaffney PA
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on April 24, 2008, I served a true and correct copy of the Plaintiff's Motion to Amend to Allege Punitive Damages on the following by the method of delivery designated below:

Mark Fuller
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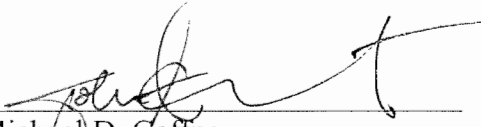
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**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE UTILITIES, INC., an Idaho
corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual.

Defendants/Counterclaimants.

Case No.: CV-06-7097

PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION FOR
RECONSIDERATION
(RULE 11(A)(2)(B))

The plaintiff, Printcraft Press, Inc. (Printcraft), through counsel of record, Beard
St. Clair Gaffney PA, respectfully submits the following memorandum in support of its
Motion for Reconsideration.

INTRODUCTION

On August 31, 2007, Judge St. Clair granted Sunnyside's Motion for Summary
Judgment. Judge St. Clair dismissed Printcraft's claim for breach of contract against

Plaintiff's Memorandum in Support of Motion for Reconsideration (Rule 11(a)(2)(B))

Sunnyside Park Utilities, Inc. (Sunnyside). The breach of contract claim arose out of Sunnyside's severing Printcraft's sewer connection. Judge St. Clair commented that "Sunnyside was justified in severing Printcraft's sewer connection. . . ."

Judge St. Clair committed at least two errors in his decision. First, Judge St. Clair failed to analyze the claim properly by not considering whether Printcraft's alleged IDAPA violation *materially* breached the Third Party Beneficiary Utility Agreement (the Agreement).¹ Second, the Court usurped the jury's role by making a factual finding on the materiality of Printcraft's breach of the Agreement. Properly analyzed, the facts underlying Printcraft's claim should have prevented summary judgment. Furthermore, whether Printcraft materially breached its obligations under the Agreement or the Rules and Regulations is a fact question for a jury. Printcraft's motion should be granted.

MOTION FOR RECONSIDERATION STANDARD

In Idaho, Rule 11(a)(2)(B) authorizes motions for reconsideration. IDAHO R. CIV. P. 11(a)(2)(B) (2007). The Rule provides that "a motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days after the entry of the final judgment." *Id.* The Idaho Supreme Court has repeatedly held that Rule 11(a)(2)(B) provides district courts with authority to reconsider interlocutory orders so long as a final judgment has not been entered. *Telford v. Neibaur*, 130 Idaho 932, 950 P.2d 1271 (1998).

"[T]he case law applying Rule 11(a)(2)(B) *permits* a party to present new evidence when a motion is brought under that rule, but does not *require* that the motion

¹ The court's decision never explains why Printcraft's minor infraction of an IDAPA rule justified Sunnyside in severing Printcraft's sewer service in perpetuity. One must conclude that the court regarded Printcraft's IDAPA rule violation as a material breach of the Agreement, justifying Sunnyside's non-performance of its contractual duties under the Agreement.

be accompanied by new evidence.” *Johnson v. Lambros*, 147 P.3d 100, 104 (Idaho 2006)(emphasis in original). It is entirely permissible for a trial court to reconsider its own interlocutory orders for facial errors or errors of law. *Id.* A judge who replaces another judge has the authority to reconsider, review, and vacate rulings made by the previous judge. *See Farmers Nat’l Bank v. Shirey*, 126 Idaho 63, 878 P.2d 762 (1994).

ARGUMENT

I. There are issues of fact whether Printcraft’s discharges materially breached the Agreement.

Judge St. Clair erroneously granted summary judgment for Sunnyside.² Summary judgment is appropriate only when the record shows that there is “no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” *Fenwick v. Idaho Dep’t of Lands*, 160 P.3d 757, 760 (Idaho 2007). The question whether Printcraft’s discharge of water softener brine materially breached the terms of the Agreement is a jury question.

The Idaho Supreme Court defined “material breach” as a [breach of contract] which touches the fundamental purpose of the contract and defeats the object of the parties in entering into the contract. *Ervin Constr. Co. v. Van Orden*, 125 Idaho 695, 699-700, 874 P.2d 506, 510-11 (1983). Rescission of a contract is available only when one of the parties has committed a material breach which destroys the entire purpose of entering into the contract. *First Sec. Bank of Idaho v. Murphy*, 131 Idaho 787, 792, 964 P.2d 654, 659 (1998). Rescission is not available, however, where the breach of contract is only incidental and subordinate to the main purpose of the contract. *Id.* Rescission is

² In its opinion, the court stated, “Accordingly the Court finds that there is no issue of material fact that Printcraft discharged substances into the sewer system in violation of state law.” The court analyzed the wrong issue in determining whether any facts precluded granting summary judgment.

an equitable remedy that totally abrogates the contract and should be granted only where one party has committed a breach so material that it destroys or vitiates the entire purpose for entering into the contract. *Barnard & Son v. Akins*, 109 Idaho 466, 474, 708 P.2d 871, 879 (1985) (Donaldson, J., dissenting).³ “Whether a breach of contract is material is an issue of fact.” *Costa v. Borges*, 2008 Ida. LEXIS 29, *14 (March 10, 2008). Thus, the disconnection of Printcraft from Sunnyside’s septic system could only have been justified if Printcraft’s performance of its obligations materially breached its obligations. Judge St. Clair, however, never analyzed the claim in this manner.

Printcraft did not materially breach its obligations. Sunnyside never presented the Court with any facts suggesting that Printcraft’s discharges were in any way contrary to the Agreement’s fundamental purpose and meaning, i.e., the provision of sewer service to Sunnyside Industrial Professional Park’s (SIPP) occupants. The discharge’s effects on Printcraft’s and Sunnyside’s obligations, including whether the discharge materially breached Printcraft’s obligations, are issues of fact for a jury. Both parties have retained experts that will testify about water softener brine’s effects on the septic system.⁴

Thus, there are questions of material fact whether Printcraft’s actions materially breached the Agreement or the Rules and Regulations. At the time Printcraft moved into SIPP, Printcraft did not have the Agreement or the Rules and Regulations. On September 20, 2006, after Sunnyside’s septic system failed, Sunnyside provided Printcraft with a

³ It seems almost too obvious that the Agreement and Rules and Regulations do not exist solely for the purpose of preventing water softener brine from being discharged into Sunnyside’s septic system. Thus, any discharge of water softener brine simply cannot be a material breach of these specific agreements under any legal standard recognized in Idaho.

⁴ Consequently, Printcraft’s water softener brine discharge obviously did not destroy the entire purpose of entering the contract since, according to Travis Waters, modifying Printcraft’s water softener brine discharge was “a simple 10 minute fix.” Furthermore, the Sunnyside septic system functioned normally before and after the June 9, 2006 failure.

copy of the Agreement and the Rules and Regulations. (Waters Aff. Ex. S.)⁵ This was the first time Printcraft had been provided with this information. (*Id.*) Sunnyside cannot account for the fact that Printcraft had no notice of the Agreement's provisions or the provisions in the Rules and Regulations. Violation of the documents' terms without providing notice of those terms to Printcraft cannot be a material breach. The Agreement and the Rules and Regulations were not recorded at the time Printcraft moved into SIPP. Printcraft had no knowledge of these documents' existence or contents prior to September 20, 2006. The fact that Sunnyside did not provide Printcraft with the information upon which Sunnyside now relies is probative of the incidental nature and importance of the documents' contents. Only a jury can determine whether the documents' contents, unknown to Printcraft at the time of the septic system failure, could form the basis for a material breach of contract by Printcraft.

There are questions of material fact whether discharge of water softener brine defeated the Agreement's purpose, i.e., the discharge prevented Sunnyside from providing sewer service to SIPP's occupants. H. Eric Nuttall (Nuttall), one of Printcraft's expert witnesses, testified that the discharge of NaCl Brine⁶ "more probable than not . . . had no negative effect on the SUI septic system and did not cause the failure." (Nuttall Aff. ¶ 11.) Nuttall commented that the highest concentration of NaCl Brine discharged into the septic system was 600 parts per million (ppm). (*Id.*) This concentration is less than the salt concentration of brackish water. (*Id.*) Consequently, the NaCl Brine did not cause the septic system's failure. (*Id.*) Nuttall also concluded that, more probable than not, any discharge of hydroquinone was so low in concentration that such a discharge

⁵ This affidavit was previously submitted to the Court on August 2, 2007.

⁶ The NaCl Brine is the same as the water softener brine referred to by Printcraft.

could not have caused the septic system failure. (*Id.* ¶ 12.) Nuttall similarly found that Printcraft's discharges of copper, zinc, and silver were so low in concentration that more probable than not those discharges did not cause the septic system's failure. (*Id.* ¶¶ 13-14.) Nuttall's testimony is consistent with Robert C. Starr's (Starr) testimony. Starr testified that based on the facts presented in this case that more probable than not the failure of the septic system occurred because of the volume of wastewater discharged into the system. (Starr Aff. ¶ 42.) Starr also concluded that the discharge of water softener brine had no harmful effect on the septic system. (*Id.* ¶ 43.) Thus, there is a genuine factual dispute whether the discharge of water softener brine into the system constituted a material breach of the Agreement or the Rules and Regulations. Judge St. Clair failed to recognize this in his decision and his decision should be vacated.

Clearly, Sunnyside is attempting to capitalize on the water softener brine issue as a pretext for cutting off Printcraft's sewer in perpetuity. The evidence does not suggest that discharging water softener brine was even within the realm of the parties' thinking. Kellye Eager, Eastern Idaho Public Health District's Environmental Health Director, testified in her recent deposition that she had never been concerned about water softener brine being discharged into Sunnyside's system. (*Transcript in preparation.*)⁷ Eager testified that District Seven was never concerned with what was being discharged but rather Sunnyside's inability to handle the flows of 11 units when it was only permitted for two units. Eager testified that the only time water softener brine is even an issue is if the soil is classified as Type C (clay). Here, the soil is undisputedly Type A (gravelly). (*Id.*) Eager testified that she had never initiated enforcement actions for the discharge of water softener brine into a septic system. (*Id.*) Indeed, Printcraft has remediated its

⁷ The relevant portions of Eager's deposition will be provided to the Court as soon as they are available.

“discharge issues” within the meaning of the Rules and Regulations and yet Sunnyside insists on obstructing Printcraft’s business.

Whether Printcraft materially breached its obligations under the Agreement or the Rules and Regulations is a fact question. The Agreement and the Rules and Regulations were not created solely for the purpose of not discharging water softener brine into Sunnyside’s septic system. The fundamental purposes have not been defeated by the water softener brine discharge. Printcraft’s motion should be granted.

II. There are issues of fact whether the Agreement or the Rules and Regulation were violated.

In order to discharge water softener brine into a septic system it is the responsibility of the system’s designer to acquire director approval from the Idaho Department of Environmental Quality (DEQ).

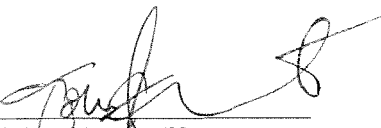
The relevant portion of the Idaho Administrative Code governing Individual/Subsurface Sewage Disposal governs the design, construction, siting and abandonment of individual and subsurface sewage disposal systems. IDAPA 58.01.03.004.01. The IDAPA regulations are intended to insure that blackwaste and wastewater are safely contained, treated “(a) are not accessible to insects, rodents, or other wild or domestic animals; (b) are not accessible to individuals; (c) do not give rise to a public nuisance due to odor or unsightly appearance; (d) do not injure or interfere with existing or potential beneficial uses of the waters of the State.” *Id.* IDAPA provides that water softener brine, “cannot be discharged into any system unless that discharge is approved by the Director.” *Id.* 58.01.03.004.03. Printcraft violated none of these subsections by discharging water softener brine into the septic system.

Since IDAPA governs the design and construction of the subsurface sewage disposal system, it would have been incumbent on Sunnyside and its principals to have acquired Director approval for the discharge of water softener brine into Sunnyside's sub-standard septic system. Since Sunnyside designed and constructed the septic system it should have either acquired Director approval or informed the entities connected to the septic system of the limitations. Sunnyside never informed Printcraft of the system's limitation until after the system failure in June 2006. Printcraft was never given the chance, nor was it Printcraft's responsibility, to have acquired Director approval for discharging water softener brine into the septic system. Since Sunnyside never informed Printcraft of the limitations, there are fact issues whether Printcraft violated IDAPA.⁸

CONCLUSION

Based on the foregoing, Printcraft respectfully requests this Court to vacate its August 31, 2007 ruling and to permit Printcraft to reinstate its breach of third party beneficiary utility agreement claim.

DATED: April 24, 2008.



Michael D. Gaffney
Lance J. Schuster
Jeffrey D. Brunson
John M. Avondet
Of Beard St. Clair Gaffney PA
Attorney for Plaintiff

⁸ This would be as opposed to Sunnyside. Interestingly, and this is something Judge St. Clair completely ignored in his previous decision, Sunnyside has unclean hands in its use of IDAPA as a sword against Printcraft in this litigation. IDAPA 58.01.03.004.04 states that "unless authorized by the Director, no person shall provide for or connect additional blackwater or wastewater sources to any system if the resulting flow or volume would exceed the design flow of the system." Sunnyside violated this provision of IDAPA since its septic system was permitted for 1 or 2 commercial buildings only. (Eager Dep. 142:19-143:4, December 7, 2007.) Once Sunnyside allowed a third connection to its system Sunnyside violated IDAPA. (*Id.* 148:17-21.)

CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on April 24, 2008, I served a true and correct copy of the Plaintiff's Memorandum in Support of Motion for Reconsideration (Rule 11(a)(2)(B)) on the following by the method of delivery designated below:

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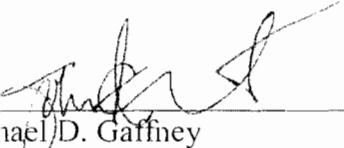
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Attorney for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE UTILITIES, INC., an Idaho
corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual,

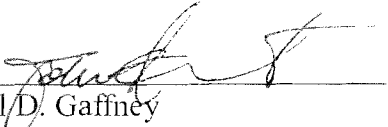
Defendants/Counterclaimants.

Case No.: CV-06-7097

PLAINTIFF'S MOTION FOR
RECONSIDERATION
(RULE 11(A)(2)(B))

The plaintiff, Printcraft Press, Inc., through counsel of record, Beard St. Clair Gaffney PA, respectfully moves this Court to reconsider its August 31, 2007, Memorandum Decision and Order. This motion is supported by a memorandum of law and affidavits submitted concurrently herewith. Oral argument is requested.

DATED: April 24, 2008.



Michael D. Gaffney
Lance J. Schuster
Jeffrey D. Brunson
John M. Avondet
Beard St. Clair Gaffney PA
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on April 24, 2008, I served a true and correct copy of the Plaintiff's Motion for Reconsideration (Rule 11(a)(2)(b)) on the following by the method of delivery designated below:

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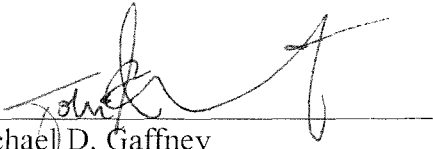
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**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE UTILITIES, INC., an Idaho
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Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual.

Defendants/Counterclaimants.

Case No.: CV-06-7097

AFFIDAVIT OF H. ERIC NUTTALL

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

I, Eric Nuttall, having first been sworn, depose and state:

1. I am over the age of eighteen, am competent to testify, and do so from personal
knowledge.

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2. I have been retained as an expert witness by Printcraft Press, Inc. (Printcraft).

3. I am currently Senior Principal Professional employed with Kleinfelder, Inc. in Albuquerque, New Mexico, and am Professor Emeritus in the Chemical and Nuclear Engineering Department at the University of New Mexico.

4. My focus is on in situ soil and groundwater remediation, both biologically and through in situ chemical oxidation. I have worked on and consulted on numerous bioremediation processes.

5. I am of the opinion that more probable than not the failure of the Sunnyside Park Utilities, Inc. septic system was caused by a grossly under-designed septic system.

6. The design rate influent rate was 300 gallons per day (gpd). The system was subjected to approximately 30 times the design flow rate during the time period of a few weeks prior to the observation of water accumulation on the surface immediately about the septic system. The system was designed for 300 gpd and to service one or two buildings with a total of ten people. These requirements were greatly exceeded.

7. More probable than not the vadose zone soil below the drainfield infiltrators became saturated and the septic effluent water rose at the ground surface creating the ponding. From the photographic evidence I have review, there does not appear to be any solid waste plugging the waste discharge pipe from Printcraft.

8. I have also reviewed and analyzed the following chemicals for their effect on the septic system bacteria:

- NaCl Brine;
- Hydroquinone;
- Copper (Cu);
- Zinc (Zn); and,

- Silver.

9. My opinion, more probable than not, is that none of the foregoing chemicals negatively impacted the SUI septic system bacteria.

10. I have not received any data that indicates that the SUI septic system failed due to a reduction in bacteria. Printcraft operated for more than four months prior to the June 2006 failure. Printcraft discharged chemicals and ink into the system during the time period before the June 2006 failure and the SUI septic system still functioned continuously until the June 2006 failure.

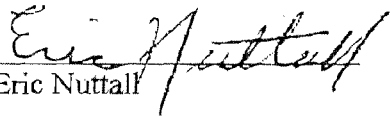
11. More probable than not the NaCl Brine had no negative effect on the SUI septic system and did not cause the failure. The highest concentration of NaCl Brine discharged was 600 parts per million (ppm). To my knowledge, bacteria can survive in brackish water ranging in salt concentrations from 1,000 ppm to 10,000 ppm. The estimated concentration of NaCl Brine was less than brackish water. Therefore, more probable than not, the NaCl Brine did not cause the SUI septic system failure.

12. Printcraft discharged hydroquinone at concentrations ranging from 1.5 ppm to 2.1 ppm. These concentrations are exceptionally low and hydroquinone is biodegradable via reductive dehydroxylation in concentrations up to 2,200 ppm. Since the concentrations of hydroquinone were so low, hydroquinone, more probable than not, did not cause the SUI septic system failure.

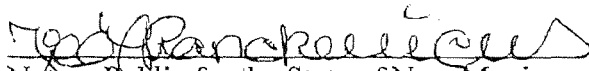
13. Printcraft discharged copper and zinc well below toxic concentrations. It is my opinion that more probable than not the concentrations of copper and zinc did not cause the failure of the SUI septic system. It is also my opinion that more probable than not the discharge of copper and zinc did not impact the SUI septic system bacteria.

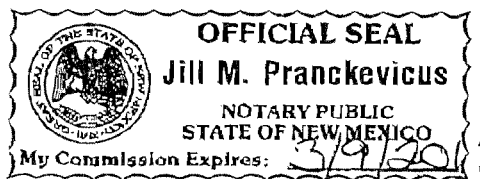
14. Printcraft's discharge of silver is initially treated in a silver recovery unit prior to discharge to the building sewer where it is diluted by other wastewater from Printcraft. Based on Printcraft's treatment of silver and the dilution of the silver in the other wastewater my opinion is that more probable than not the silver discharge did not have negative effects on the SUI septic system's bacteria.

DATED: April 23, 2008


Eric Nuttall

Subscribed and sworn before me on this 23rd day of April, 2008.


Notary Public for the State of New Mexico
Residing at:
Commission expires:
(SEAL)



CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on April 24, 2008, I served a true and correct copy of the Affidavit of H. Eric Nuttall on the following by the method of delivery designated below:

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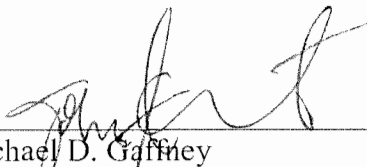
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**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

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SUNNYSIDE UTILITIES, INC., an Idaho
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PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

PLAINTIFF'S MEMORANDUM IN
SUPPORT OF MOTION TO AMEND TO
ALLEGE PUNITIVE DAMAGES

The plaintiff, Printcraft Press, Inc. (Printcraft), through counsel of record, Beard St. Clair Gaffney PA, respectfully submits the following memorandum in support of its Motion to Amend to Allege Punitive Damages against the defendants.

INTRODUCTION

The defendants engaged in fraudulent conduct against Printcraft. In the event that Printcraft can prove fraud against the defendants, Printcraft should be entitled to punitive

Plaintiff's Memorandum in Support of Motion to Amend to Allege Punitive Damages

damages. Thus, Printcraft should be granted leave to amend its complaint to allege punitive damages.

PUNITIVE DAMAGES STANDARD

Idaho Code § 6-1604(1) provides for punitive damages. “In any action seeking recovery of punitive damages, the claimant must prove, by a preponderance of the evidence, oppressive, fraudulent, wanton, malicious, or outrageous conduct by the party against whom the claim for punitive damages is asserted.” IDAHO CODE ANN. § 6-1604(1) (2007). Punitive damages are not favored in the law and should be awarded in only the most unusual and compelling circumstances. *Manning v. Twin Falls Clinic & Hosp.*, 122 Idaho 47, 52, 830 P.2d 1185, 1190 (1992). The foundational requirement is merely that some legally protected interest be invaded. *See Crosby v. Rowand Mach. Co.*, 111 Idaho 939 944, 729 P.2d 414, 419 (Ct. App. 1986). The trial court has discretion to decide whether to grant a motion to amend to add punitive damages. *Vendelin v. Costco Wholesale Corp.*, 140 Idaho 416, 424, 95 P.3d 34, 42 (2004).

When a party seeks to amend its complaint to allege punitive damages, the evidentiary burden is less than the party’s burden at trial. Idaho Code section 6-1604(2) provides that a court should allow a party to amend its claims to include punitive damages if “after weighing the evidence presented, the court concludes that, the moving party has established at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages.” IDAHO CODE ANN. § 6-1604(2). Idaho courts have found that the burden to amend pleadings for punitive damages is a preponderance standard as opposed to the clear and convincing evidence standard. *Myers v. Workmen’s Auto. Ins. Co.*, 140 Idaho 495, 501, 95 P.3d 977 (2004). Thus, this court must make two decisions. First, the Court must decide whether there are facts supporting

a verdict of punitive damages if proven. Second, whether Printcraft has a reasonable likelihood of proving those facts by a preponderance of the evidence at trial.

The purpose of a punitive damages award is to deter bad conduct. *See Linscott v. Rainier Nat. Life Ins. Co.*, 100 Idaho 854, 857, 606 P.2d 958, 961 (1980). An award of punitive damages requires proof of a “bad act and a bad state of mind.” *Id.* In the event that the district court grants a motion to amend to allege punitive damages, the district court retains the discretion to withdraw any claim for punitive damages from the jury prior to the close of trial. *Payne v. Wallace*, 136 Idaho 303, 308, 32 P.3d 695, 700 (Ct. App. 2001).

STATEMENT OF FACTS REASONABLY LIKELY TO BE PROVED

1. On August 15, 1996, Sunnyside Industrial and Professional Park, LLC (SIPP) completed and filed a septic sewer system permit for the installation of a septic sewer system. The septic sewer system permit included numerous pages from SIPP describing the use of the system and included drawings and details of the system’s location. The septic sewer permit states that it is only for “1 or 2 commercial office buildings.” (Waters Aff. Ex. A.)¹

2. District Seven inspected the septic system and tank on August 23, 1996. District Seven noted that a 1,000 gallon tank had been installed instead of the 750 gallon tank as listed in the original application. (*Id.* Ex. B.)

3. District Seven’s report also notes that the septic tank for SIPP required cleaning “every three to five years.” (*Id.*)

4. On March 29, 2002, Doyle Beck and Kirk Woolf formed Sunnyside. (*Id.* Ex. E.)

¹ This affidavit was previously submitted to the Court on August 2, 2007.

5. At the time Sunnyside was formed the original septic sewer system operated with more connections than it had been approved for. (*Id.* Ex. F.)

6. On April 15, 2002, District Seven notified SIPP that “no new connections will be allowed to the current sewer collection system until a Large Soil Absorption System [LSAS], that replaces the current septic system, is approved and operating.” (*Id.*)

7. District Seven indicated that it intended to notify Bonneville County that the current septic system servicing SIPP was inadequate for any additional connections. (*Id.*)

8. On April 16, 2002, Sunnyside entered into an agreement with Sunnyside Park Owners Association, Inc. (SPOA). The agreement provided for water and sewer services for the subdivision that was being developed. The agreement is titled “Third Party Beneficiary Utility Agreement.” (*Id.* Exs. D & G.)

9. The Third Party Beneficiary Utility Agreement obligated Sunnyside to provide adequate sewage services for the safe collection and disposal of all sewage from the buildings located in the Sunnyside Industrial Park. (*Id.* Ex. G.)

10. According to the Third Party Beneficiary Utility Agreement, Sunnyside bears the full responsibility for adjustment, repair, installation, or improvement of the facilities to bring the sewer system into compliance with the State of Idaho’s regulations or recommendations. (*Id.*)

11. Neither Sunnyside nor SPOA recorded the Third Party Beneficiary Utility Agreement in 2002.

12. Prior to the construction of the building occupied by Printcraft, Travis Waters saw a sign listing the subdivision as “Sunnyside Industrial and Professional Park.” (*Id.* ¶ 16.)

13. Travis Waters reviewed the plat map and the subdivision was labeled on the plat map as “Sunnyside Industrial and Professional Park.” (*Id.* ¶ 17.)

14. The Second Amended Covenants, Conditions and Restrictions of Sunnyside Industrial and Professional Park (CCRs) provide that the general purpose and use of the lots “shall be that of a continued use of said lots for commercial and industrial purposes.” (*Id.* Ex. H.) The CCRs also provide that the lots would be used for “manufacturing and industrial enterprises.” (*Id.*)

15. Printcraft relied on the description of the subdivision, the plat map, and the CCRs in deciding that the SIPP subdivision would be an ideal location for Printcraft’s business. (*Id.* ¶ 19.)

16. In early 2005, Travis Waters, Printcraft’s president, met with Beck and Woolf. Printcraft provided Beck and Woolf with blueprints for the building to be occupied by Printcraft. (*Id.* ¶ 20.)

17. Beck and Woolf told Waters at the September 2005 meeting that a sewer connection existed on the lot where Printcraft’s building would be built. (*Id.* ¶ 21.)

18. Waters told Beck and Woolf that Printcraft would be the occupant of the building after construction. (*Id.* ¶ 21.)

19. Beck and Woolf knew and understood the nature of Printcraft’s business. (*Id.* ¶ 22.)

20. Beck and Woolf knew the name of Printcraft’s business. (*Id.*)

21. Beck, Woolf, SIPP, and Sunnyside never disclosed to Printcraft that the septic sewer system provided by Sunnyside was only permitted for “1 or 2 commercial buildings” prior to Printcraft’s occupancy of the building. (*Id.* ¶ 23.)

22. Beck, Woolf, SIPP, and Sunnyside did not disclose to Printcraft prior to its occupancy of the building that seven or eight commercial buildings were connected to the septic system in violation of the septic system’s permit. (*Id.* ¶ 24.)

23. Beck, Woolf, SIPP, and Sunnyside never disclosed to Printcraft prior to Printcraft's occupancy of the building that the septic system consisted of only one 1,000 gallon tank and that the system's capacity was only 500 gallons per day. (*Id.* ¶ 25.)

24. Prior to Printcraft's occupancy of the building, Printcraft was never notified that District Seven had advised Beck and Woolf that "no new connections will be allowed on the current sewer collection system until a [LSAS], that replaces the current septic system, is approved and operating. (*Id.* ¶ 26, Ex. L.)

25. Prior to Printcraft's occupancy of the building, Printcraft was never notified by Beck, Woolf, SIPP, or Sunnyside that the Third Party Beneficiary Utility Agreement or the CCRs existed or that the defendants relied upon them. (*Id.* ¶ 27.)

26. In January 2006, Printcraft moved from its previous location to the building located within SIPP. Printcraft started operating its business in January 2006 at this location.

27. On August 23, 2006, Beck delivered a letter to District Seven admitting that the original system was designed only to handle 500 gallons per day. The letter admits that in March 2002, the system approached 300 to 400 gallons per day. (*Id.* ¶ 34, Ex. P.)

28. On September 20, 2006, Printcraft received for the first time a copy of the Third Party Beneficiary Utility Agreement and the CCRs. (*Id.* ¶ 39, Ex. S.)

29. On December 15, 2006, Sunnyside severed Printcraft's septic/sewer connection. (*Id.* ¶ 48.)

30. Had Printcraft learned that the septic sewer system was permitted only to have "1 or 2 commercial building" connections, Printcraft would not have moved from its original building and occupied the premises within SIPP. (*Id.* ¶ 50.)

31. Had Printcraft learned that the septic sewer system consisted of only one 1,000 gallon tank with a daily capacity of 500 gallons, Printcraft would not have moved from its original building and occupied the premises within SIPP. (*Id.* ¶ 51.)

32. Had Printcraft learned that the septic sewer system had seven or eight commercial buildings connected to the defendants' inadequate septic sewer system in violation of the defendants' permit, Printcraft would not have moved from its original building and occupied the premises within SIPP. (*Id.* ¶ 52.)

33. Had Printcraft learned that District Seven had advised that "no new connections will be allowed on the current sewer collection system until a [LSAS], that replaces the current septic system, is approved and operating" Printcraft would not have moved from its original building and occupied the premises within SIPP. (*Id.* ¶ 53.)

34. Had Printcraft learned that the Third Party Beneficiary Utility Agreement or the CCRs existed or that the defendants relied upon them as a way to only accept "human waste" into their septic sewer system, Printcraft would have never moved from its original building and occupied the premises in SIPP because Printcraft would have known that the septic services would be inadequate for Printcraft's needs.

35. Kellye Eager (Eager) testified that the septic system has a capacity problem. (Eager Dep. 142:19-143:4, December 7, 2007.)

36. Eager also testified that the capacity problem with the septic system is derived from the 11 connections to a system that was originally permitted for two. (*Id.* 143:6-8.)

37. The septic system at Sunnyside violates IDAPA because it is located in a pit. It could be flooded in the event of a major snow melt. The tanks in series requirements do not meet the IDAPA requirements for the said volume of the tanks as placed in series.

The tanks were installed without inspection and there were other deficiencies to what was installed to the temporary system. (*Id.* 143:15-22.)

38. The septic system also did not take into consideration the process flows. (*Id.* 143:24-25.)

39. The original permit for the septic system allowed 300 gallons per day, one or two buildings. The connection of the third building violated IDAPA. (*Id.* 148:17-21.)

ARGUMENT

The defendants' fraudulent conduct regarding Printcraft should be deterred by this Court. Allowing Printcraft to amend its complaint to include a claim for punitive damages accomplishes this goal of deterrence. Any amendment claiming punitive damages would be derivative of Printcraft's claims of fraud against the defendants. The breach of contract claims are not relevant to Printcraft's motion for punitive damages.

Punitive damages may be awarded when a defendant has committed fraud. *See* IDAHO CODE ANN. § 6-1604(1); *see also Walston v. Monumental Life Ins. Co.*, 129 Idaho 211, 221, 923 P.2d 456, 466 (1996). Exemplary damage awards are appropriate when the defendant is engaged in deceptive business practices operated for a profit posing danger to the general public. *Id.* Punitive damages are linked to the underlying legal or equitable claims alleged by the party. *Payne v. Wallace*, 136 Idaho 303, 308, 32 P.3d 695, 700 (Ct. App. 2001). Thus, a party should explain which claims justify an award of punitive damages. Printcraft's fraud claims alone justify a claim for punitive damages. A "plaintiff must first be entitled to legal or equitable relief before punitive damages can be obtained." *Id.*; *see also Boise Dodge, Inc. v. Clark*, 92 Idaho 902, 906-07, 453 P.2d 551, 555-56 (1969). Thus, if Printcraft can prove fraud, then it should also be able to allege punitive damages.

In this case, there is a reasonable likelihood that Printcraft will prevail on its fraud claims against the defendants. The district court has already found that there are questions of material fact on the fraud claims and that Sunnyside and SIPP are not entitled to judgment as a matter of law. (Mem. Dec. & Order 11-18.) Since Printcraft's fraud claims are still alive, Printcraft should be allowed to allege a claim for punitive damages. See *Walston*, 129 Idaho at 221, 923 P.2d at 466. The case law discussing the tort of fraud's relationship with punitive damages suggests that proof of fraud satisfies both the "bad act" requirement and the "bad state of mind" requirement for punitive damages. See *Umphrey v. Sprinkel*, 106 Idaho 700, 710, 682 P.2d 1247, 1257 (1983). "It is well established in this state that punitive damages may be awarded when the defendant has committed fraud." *Id.*; see also *Jolley v. Puregro Co.*, 94 Idaho 702, 496 P.2d 939 (1972).

In *Umphrey*, real estate lots within Lone Mountain Ranch were advertised as having a "good year-round road" and "domestic water supplied by REPA . . . available prior to June 1st, 1973." *Umphrey*, 106 Idaho at 03, 682 P.2d at 1250. The plaintiffs all claimed that the adequacy of the road and the water supply had been fraudulently represented by the defendants. *Id.* at 704, 682 P.2d at 1251. Punitive damages were later allowed for the plaintiffs. *Id.* at 710, 682 P.2d at 1257. The Court found that the defendant's "practice of falsely representing that building lots would be supplied with adequate water and access falls squarely within the ambit of deceptive business practices in which the award of additional punitive damages is authorized." *Id.* at 711, 682 P.2d at 1258. The facts in *Umphrey* are similar to the facts in this case.

In this case, the SIPP lots were advertised as possessing adequate sewer and water for industrial and commercial businesses. Only the defendants knew about the system's

limitations. At the time Printcraft arranged to move into SIPP, the Third Party Beneficiary Utility Agreement and the CCRs had not been recorded and the defendants took no steps to try and record those documents until after Printcraft had moved to the subdivision. In fact, the defendants did not disclose the existence of the Third Party Beneficiary Utility Agreement until the litigation was in progress. The defendants failed to disclose to Printcraft that the defendants' central septic system was being heavily scrutinized by District Seven and the Department of Environmental Quality (DEQ) for the system's inadequacies. Yet the defendants advertised SIPP as a commercial and industrial park for commercial enterprises. Only the defendants knew the limitations imposed by District Seven on the septic system. Only the defendants knew the system's limitations regarding flows. Only the defendants knew how close the daily flows were to exceeding the 500 gallon per day limit. The defendants possessed all of this information and the information was never disclosed to Printcraft prior to Printcraft moving into SIPP. The defendants' deceptive business conduct is similar to *Umphrey* and justifies an amendment for punitive damages.

There is a reasonable likelihood that Printcraft will prove at trial that the defendants advertised the subdivision as an industrial and commercial park. Similarly, there is a reasonable likelihood that Printcraft will prove at trial that the defendants also represented that the septic system in the subdivision would be sufficient for Printcraft's needs. There is a reasonable likelihood that Printcraft will prove that the defendants knew the nature of Printcraft's business. The defendants knew that Printcraft engaged in the business of printing and needed a septic connection.

The defendants' failure to disclose critical information as to utilities limitations was key to Printcraft's decision to move into the industrial park. It is clear that the

defendants knowingly failed to disclose this critical information. Travis Waters testified that had Printcraft known the limitations that Printcraft would never have moved into the industrial park. This testimony, at a minimum, establishes a reasonable likelihood that Printcraft will carry its evidentiary burden at trial.

There is a reasonable likelihood that Printcraft will be able to show at trial that the information possessed by the defendants should have been disclosed to Printcraft.


Printcraft has a reasonable likelihood of showing each of the elements of fraud. There is similarly a reasonable likelihood that Printcraft will be able to prove that the information possessed by the defendants was “so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it.” (Mem. Dec. & Order 14.) The Court denied summary judgment because there are questions of material fact on all of the elements of Printcraft’s fraud claims. Thus, there is a reasonable chance that Printcraft will be able to establish fraud when this matter goes to trial. The reasonable likelihood entitles Printcraft to amend its complaint to allege punitive damages.

There is also a reasonable likelihood that Printcraft will be able to show that all of the defendants, including Beck and Woolf, should be jointly and severally liable for punitive damages. All of the defendants engaged in fraudulent conduct towards Printcraft. All of the defendants failed to disclose the system’s limitations, the CCRs, the Third Party Beneficiary Utility Agreement, the limitations imposed by District Seven and the DEQ, etc. Since all of the defendants engaged in fraudulent conduct toward Printcraft, all of the defendants should be responsible for any punitive damages awarded by the jury.

CONCLUSION

As a result of the foregoing, Printcraft's motion to amend to add a claim for punitive damages should be granted.

DATED: April 24, 2008.



Michael D. Gaffney
Lance L. Schuster
Jeffrey D. Brunson
John M. Avondet
Of Beard St. Clair Gaffney PA
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on April 24, 2008, I served a true and correct copy of the Plaintiff's Memorandum in Support of Motion to Amend to Allege Punitive Damages on the following by the method of delivery designated below:

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8 02 24 P1:29

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 Facsimile: (208) 529-9732

Attorney for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
 BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
 corporation,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE UTILITIES, INC., an Idaho
 corporation. SUNNYSIDE PARK
 OWNERS ASSOCIATION, INC. an Idaho
 corporation, and SUNNYSIDE
 INDUSTRIAL AND PROFESSIONAL
 PARK, LLC, an Idaho limited liability
 company, DOYLE BECK, an individual,
 KIRK WOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

AFFIDAVIT OF ROBERT C. STARR

STATE OF IDAHO)
) ss.
 COUNTY OF BONNEVILLE)

I, Robert C. Starr, having first been sworn, depose and state:

1. I am over the age of eighteen, am competent to testify, and do so from personal knowledge.

2. I have been retained as an expert witness by Printcraft Press, Inc. (Printcraft).

3. My education includes a Bachelor of Civil Engineering, and both a Master of Science and a Doctor of Philosophy in Earth Science, with a specialty in contaminant hydrogeology.

4. I have worked as a water resources engineer or hydrogeologist since undergraduate graduation.

5. I have also worked with two engineering consulting firms, one university research center, and one national laboratory in either civil engineering or hydrogeology.

6. I am currently a hydrogeologist and am employed by North Wind, Inc.

7. My primary expertise is in groundwater hydrology. This discipline includes the evaluation of water and contaminants in groundwater and the unsaturated zone above the water table, evaluation of the movement and fate of contaminants in the subsurface, and the remediation of subsurface contamination.

8. Septic systems are a common source of groundwater contamination, which falls within the discipline of hydrogeology.

9. I have reviewed numerous documents and other information as the foundation for my opinions. The basis for my opinions include:

- Documents related to the permitting and inspection of the Sunnyside Utilities, Inc. (SUI) septic system;
- An examination of the Printcraft facility;

- Interviews with Printcraft personnel including Travis Waters, Rick Boyack, Todd Landon, Curt Gaddie, and Jeanie Reimer;
- An examination of Material Safety Data Sheets (MSDS) for products used by Printcraft;
- A review of published reports describing the geology of the vicinity of the site;
- Technical calculations performed to determine Printcraft's water usage and wastewater flowrates from Printcraft and other tenants of Sunnyside Industrial and Professional Park;
- Calculation of product ingredient concentrations;
- Visual Examination of Sunnyside Industrial Professional Park (SIPP);
- Visual examination of the pit in which SUI's septic system is located; and
- Visual examination of a portion of a gravel pit adjacent to the SUI septic system.

10. The SUI septic tank and leach field (the site) are located in a pit adjacent to 4125 Professional Way in Idaho Falls, Idaho.

11. The geologic materials in the area where the SUI septic system is located consist of coarse grained alluvium (cobbles, gravel, and sand) above basalt rock.

12. The septic system permit application and inspection report describe the soil in the leach field as:

- A gravelly/sandy, 0.75 GPD/SqFt
- A sandy gravel

- A gravelly

13. The soil in which a second septic tank and leach field adjacent to the original system were permitted is described as "Soil Type A-2."

14. Type A-1 soil is medium sand.

15. Type A-2 is not defined.

16. Type A-2a soil is medium sand.

17. Type A-2b soil is either fine sand or loamy sand (sand with a silt or clay fraction).

18. There is some uncertainty about the soil type at the second leach field and given the lack of any mention of fine textured soil in any of the descriptions, Type A-2b can be eliminated. Thus, Type A-2a is likely the soil type.

19. The design wastewater application rate depends on soil type. The design application flowrate specified in the septic system permit is 0.75 gallons per day per square foot (gpd/ft²).

20. The design wastewater application rate and the permitted capacity for the SUI septic system is 300 gallons per day. This is calculated by multiplying the design application rate of 0.75 gpd/ft² by the leach field area of 400 square feet.

21. An examination of the soils exposed in the pit where the SUI septic system is located and in a larger adjacent gravel pit, an examination of a photograph of soil excavated to expose a leach field line, and an examination of a photograph of soil exposed in the bottom of a leach field drain line indicate that the soil is a gravelly medium to coarse sand. This soil type has a larger actual infiltration rate than the design value, 0.75 gpd/ft², listed on the septic permit.

22. The actual infiltration capacity of the SUI septic system is calculated by multiplying the infiltration rate (10 gpd/ft²) by the leach field area (400 square feet). This results in 4,000 gpd and would allow the system to operate successfully, in terms of infiltration, at flowrates larger than the permitted capacity (300 gpd).

23. The daily volume of wastewater produced by personnel working within SIPP, at businesses other than Printcraft, is calculated by multiplying the number of personnel at the businesses and the daily wastewater volume produced per person.

24. There was an average of 88 people working at businesses other than Printcraft within SIPP.

25. The daily wastewater flowrate for employees in office-type operations required by the State for designing septic systems is 20 gallons per person per day (gpd/person).

26. The daily wastewater flowrate produced by personnel working at businesses other than Printcraft there were connected to the SUI septic system is 88 people x 20 gpd/person. This totals 1,760 gpd. This is nearly six times the design capacity and permitted capacity for the SUI septic system.

27. The volume of sanitary wastewater for Printcraft personnel can be calculated in the same fashion. Printcraft employed 45 people at its facility on a daily basis from January to June 2006.

28. Thus the daily sanitary wastewater flowrate produced by Printcraft is 45 people x 20 gpd/person = 900 gpd. In order for Printcraft's sanitary wastewater flows alone to not exceed the design flowrate and permitted capacity of the SUI septic system, Printcraft could have employed only 15 people (15 people x 20 gpd/person = 300 gpd).

29. Until June 2006, the SUI septic system operated successfully until shortly before SUI reported the presence of water ponding above the septic system.

30. Printcraft discharged sanitary wastewater, process wastewater, spent water softener recharge brine, and reverse osmosis (RO) bypass water into the SUI septic system.

31. The flowrate of sanitary wastewater was constant over time. The flowrate of water softener recharge brine and reverse osmosis bypass water varied.

32. During the seven weeks prior to the wastewater ponding over the septic system in June 2006, RO bypass water was the largest component of wastewater discharged by Printcraft.

33. Printcraft's RO system generates high quality water by treating drinking water. The process uses a membrane allowing water, but not dissolved salts, to pass through it. The system produced 1 gallon of processed water and 9 gallons of bypass water from an influent of 10 gallons of drinking water. The dissolved salts initially present in the 10 gallons of drinking water were retained in the 9 gallons of bypass water. This results in a concentration of salts in bypass water being 11% larger than the initial concentration in drinking water. No brine is produced in the RO process.

34. The volume of RO bypass water is proportional (9:1) to the volume of RO water produced. The RO system was supplied by softened water and the volume of spent softener recharge brine produced also increased as the amount of RO-treated water increased.

35. Printcraft uses evaporative coolers to cool the building. RO treated water was used to supply the evaporative coolers prior to the date the ponding wastewater above the SUI septic system was reported. The amount of RO water used to supply the coolers

varied with weather conditions with more water being consumed when the weather was hot and dry as compared to cold or damp weather.

36. I used weather data measured at the Idaho Falls Airport, the manufacturer's information for the evaporative coolers located at Printcraft, and system operation information from Printcraft to calculate the amount of water used for evaporative cooling at the Printcraft facility. The process I used is recognized and accepted in the engineering community and I used the commercial software PsyCalc to perform the calculations.

37. Evaporative cooling at Printcraft began in April 2006 and the amount of water used for cooling increased in May and early June 2006. The volume of water consumed for cooling varied over time in response to weather changes. The volume of wastewater discharge by Printcraft into the SUI system also increased during these months.

38. From January 1, 2006 or earlier until water ponded above the SUI septic system, the flowrate into the SUI septic system was greater than the permitted capacity. The flowrate before Printcraft began operating within SIPP also exceeded the permitted capacity for the SUI septic system.

39. The total volume of wastewater discharged by Printcraft and other tenants exceeded 10,000 gpd on some days during May and June of 2006. The majority of Printcraft's flow was RO bypass water.

40. The flowrate of sanitary wastewater discharged by SIPP tenants other than Printcraft exceeded the design capacity and permitted capacity of the SUI septic system. The flowrate of sanitary wastewater discharged by Printcraft exceeded the design and permitted capacity of the SUI septic system.

41. The maximum flowrate of wastewater discharged into the SUI septic system was more than 10,000 gpd on some days during May and June of 2006. The flowrate was approximately 33 times the design and permitted capacity of the SUI septic system. The flowrate also exceeded the actual infiltration capacity of the septic system as indicated by water ponding on the ground surface above the septic system.

42. My opinion is that to a reasonable degree of engineering probability that more probable than not the cause of the SUI septic system failure in June 2006 was that the volume of wastewater discharged into the SUI septic system exceeded the system's actual infiltration capacity.

43. It is also my opinion that more probable than not the discharge of water softener regeneration brine had no harmful effect on the SUI septic system.

44. I have not seen any data that indicates that groundwater has been contaminated due to SUI's undersized septic system, discharge of material to that system by Printcraft or any other tenant located in SIPP, or by Printcraft's activities.

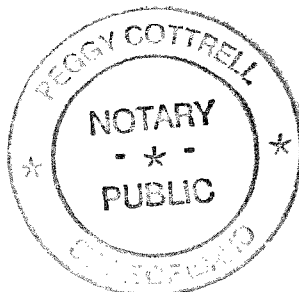
DATED: April 23, 2008

Robert C. Starr

Robert C. Starr

Subscribed and sworn before me on this 23rd day of April, 2008.

Peggy Cottrell
Notary Public for the State of Idaho
Residing at: Blackfoot, ID
Commission expires: 3-13-2009
(SEAL)



CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on April 24, 2008, I served a true and correct copy of the Affidavit of Robert C. Starr on the following by the method of delivery designated below:

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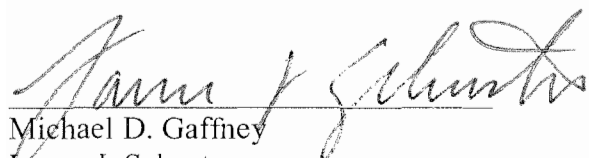
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DISTRICT 7TH JUDICIAL COURT
BONNEVILLE COUNTY IDAHO

8 FEB 23 1991

ATTORNEY FOR DEFENDANT SUNNYSIDE INDUSTRIAL AND PROFESSIONAL PARK

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE**

PRINCRAFT PRESS, INC., an)
Idaho corporation,)

Case No. CV-06-7097

Plaintiff,)

v.)

SUNNYSIDE INDUSTRIAL AND
PROFESSIONAL PARK'S

SUNNYSIDE PARK UTILITIES,)
INC., an Idaho corporation,)
SUNNYSIDE PARK OWNERS)
ASSOCIATION, INC., an Idaho)
corporation, SUNNYSIDE)
INDUSTRIAL AND PROFESSIONAL)
PARK, LLC, an Idaho limited)
liability corporation, DOYLE)
BECK, an individual, and KIRK)
WOOLF, an individual.)

ANSWER TO SECOND AMENDED
COMPLAINT, AND DEMAND FOR
JURY TRIAL

Defendants.)

SUNNYSIDE PARK UTILITIES,)
INC., an Idaho corporation,)
and SUNNYSIDE INDUSTRIAL AND)
PROFESSIONAL PARK, LLC, an)
Idaho limited liability)
corporation.)

Counterclaimants,)

v.)

PRINCRAFT PRESS, INC., an)
Idaho corporation, and TRAVIS)
WATERS, an individual.)

Counter-defendants.)

COMES NOW the Defendant, Sunnyside Industrial and

SUNNYSIDE INDUSTRIAL AND PROFESSIONAL PARK'S
ANSWER TO SECOND AMENDED COMPLAINT,
AND DEMAND FOR JURY TRIAL - 1

Professional Park, LLC., an Idaho limited liability company (hereafter "SIPP"), and in response to the Second Amended Complaint filed by Plaintiff, states and alleges as follows:

1. Defendant denies each and every allegation set forth in the Amended Complaint except as expressly admitted herein.

2. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

3. In response to paragraph 1, defendant denies that this is an action arising out of certain disclosures the defendant failed to make. Defendant asserts that this is an action arising out of the disconnection of Printcraft Press's sewer connection to the Sunnyside Park Utilities, Inc. (hereafter "Sunnyside Utilities") septic system. The defendant admits that there is a central septic system located in the Sunnyside Industrial and Professional Park subdivision which is operated and maintained by Sunnyside Utilities.

4. In answer to paragraphs 2, 3, 4, 5, 6 and 7 defendant admits the same.

5. In answer to paragraphs 8 and 9 defendant admits the same.

6. In answer to paragraph 10, defendant admits that it completed and filed with District Seven Health Department a septic permit for the installation of a septic system that would service a minimum of one to two buildings. Defendant admits that a copy of District Seven Health Department's septic permit is attached as Exhibit "A" to the Plaintiff's First Amended Complaint.

7. In answer to paragraph 11, defendant admits the same.

8. In answer to paragraph 12, defendant admits the same.

9. In answer to paragraph 13, defendant admits that on August 4, 1999, this Defendant and Bonneville County entered into a Development Agreement. The defendant denies that it promised to provide all street improvements and utilities as were necessary to be completed. The agreement specifically states that the "owner(s)" will construct said needed utility or street improvements. The agreement does not obligate the "Developer" to construct needed utility or street improvements.

10. In answer to paragraph 14, defendant admits the same.

11. In answer to paragraph 15, defendant denies the same.

12. In answer to paragraph 16, defendant admits the same.

13. In answer to paragraph 17, defendant admits that a meeting was held. However, defendant denies the remainder of the allegations contained in paragraph 17.

14. In answer to paragraph 18, defendant admits the same.

15. In answer to paragraph 19, defendant denies that the letter sent by District Seven Health Department memorialized the meeting held on March 29, 2002. Defendant admits that the letter attached as Exhibit "F" to Plaintiff's complaint is a true and correct copy of the letter sent by District Seven Health Department.

16. In answer to paragraph 18 [sic], defendant denies that Sunnyside Utilities entered into an agreement with the Defendant Sunnyside Park Owners Association, Inc. (hereafter "SPOA") for the providing of water and sewer services to the subdivision identified in the plat map. Defendant asserts that Sunnyside

Utilities entered into an agreement with SPOA, to provide sewer services to present and future owners and occupants of any subdivisions which were being or might one day be served by Sunnyside Utilities' sewer facilities.

17. In answer to paragraph 19 [sic], defendant admits the same.

18. In answer to paragraph 20, defendant admits that the Third Party Beneficiary Agreement states: "This Agreement shall also be binding upon and shall inure to the benefit of...all present and future owners or occupants." Defendant denies the remainder of paragraph 20.

19. In answer to paragraph 21, Defendant admits the same.

20. In answer to paragraph 22, Defendant denies that the Agreement is only binding on Plaintiff if the Agreement was recorded. Defendant specifically denies that the Agreement contains specific language in several places indicating that the Third Party Beneficiary Agreement would be recorded "so as to put all persons on notice that any properties receiving sewer services would be subject to the terms of the Agreement." Defendant admits that a true and correct copy of the Third Party Beneficiary Utility Agreement is attached as Exhibit "G" to plaintiff's Complaint.

21. In answer to paragraph 23, defendant denies the same.

22. In answer to paragraph 24 and 25, defendant admits the same.

23. In answer to paragraph 26, defendant admits that on or about September 12, 2005 CTR Development, LLC, the owner of the

property at that time, entered into an agreement with Sunnyside Utilities for sewer services and paid the \$1,800.00 connection fee. Sunnyside Utilities thereafter allowed the sewer connection to be made to the building currently occupied by Plaintiff. Defendant admits that a true and correct copy of Check No. 5896 made by CTR Development to Sunnyside Utilities is attached as Exhibit "I" to Plaintiff's First Amended Complaint.

24. In answer to paragraph 27, defendant based upon information provided by the plaintiff, admits the same. Defendant was not a party to the described leases.

25. In answer to paragraph 28, defendant admits that Sunnyside Utilities specifically requested from CTR Development copies of drawings or proposed drawings concerning the building which would be built and located on the premises. Defendant does not have sufficient information to determine whether Plaintiff provided the requested documents or CTR Development provided the requested documents. Therefore, Defendant cannot admit or deny whether or not Plaintiff (as opposed to CTR Development) provided the drawings to Sunnyside Utilities and its officers and/or directors.

26. In answer to paragraph 29, defendant denies the same.

27. In answer to paragraph 30, defendant denies the same.

28. In answer to paragraph 31, Defendant admits that either Plaintiff or CTR Development provided the document attached as Exhibit "K" to Sunnyside Utilities. Defendant denies that Sunnyside Utilities received a fourth page showing the floor plan or layout of the second floor. Sunnyside Utilities was verbally

informed that the second floor was to be used solely for storage.

29. In answer to paragraph 32, defendant admits the same.

30. In answer to paragraph 33, defendant admits that there were 10 or 11 connections to the sewer system operated by Sunnyside Utilities in June of 2006. Defendant admits that one of the sewer connections was to the property owned by J&LB Properties and that Plaintiff was occupying J&LP Properties' building as a month-to-month tenant. Defendant denies the remainder of the allegations in paragraph 33.

31. In answer to paragraph 34, defendant admits that in June 2006, Sunnyside Utilities' sewer system experienced a temporary overload as the result of excessive discharges from Printcraft. The cause of the overload was unknown to defendant at that time. Defendant admits that Sunnyside Utilities immediately reported the temporary overload to District Seven Health Department and that an onsite investigation was conducted by District Seven Health Department. Defendant denies the remainder of paragraph 34.

32. In answer to paragraph 35, defendant admits that a true and correct copy of the June 28, 2006 letter from District Seven Health Department to Defendant and Sunnyside Utilities is attached as Exhibit "L" to Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 35.

33. In answer to paragraph 36, Defendant admits that a true and correct copy of the July 6, 2006 letter is attached as Exhibit "M" to Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 36.

34. In answer to paragraph 37, Defendant admits that an additional septic permit for installation of additional capacity was obtained. Defendant admits that a true and correct copy of the septic permit is attached as Exhibit "N" to Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 37.

35. In answer to paragraph 38, defendant admits that District Seven Health Department physically inspected the installation of the expansion and repairs of the septic system which were conducted and completed by Sunnyside Utilities. Defendant admits that a true and correct copy of the Septic System Inspection Report is attached to Plaintiff's Amended Complaint as Exhibit "O." Defendant denies the remainder of paragraph 38.

36. In answer to paragraph 39, defendant admits the same.

37. In answer to paragraph 40, defendant admits that a copy of the August 23, 2006 letter from Doyle Beck is attached as Exhibit "Q" to Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 40.

38. In answer to paragraph 41, defendant admits that a copy of the September 13, 2006 letter from Greg Crockett is attached as Exhibit "R" to Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 41.

39. In answer to paragraph 42, defendant admits that a copy of the September 6, 2006 letter from Doyle Beck is attached to Plaintiff's Amended Complaint as Exhibit "S". Defendant denies the remainder of paragraph 42.

40. In answer to paragraph 43, defendant admits that

Plaintiff requested from Sunnyside Utilities a copy of the contract and rules governing the sewer utility services. Defendant denies the remainder of the allegations in paragraph 43.

41. In answer to paragraph 44, defendant admits that the Third Party Beneficiary Utility Agreement and the Rules and Regulations were provided to Printcraft. Defendant admits that a true and correct copy of Doyle Beck's September 20, 2006 letter is attached as Exhibit "T" to Plaintiff's Amended Complaint. Defendant denies the remainder of paragraph 44.

42. In answer to paragraph 45, defendant admits that Sunnyside Utilities and the plaintiff met in compromise negotiations at the plaintiff's premises to discuss the issues of the plaintiff's discharges and other compromise negotiations. Defendant admits that plaintiff later agreed to collect and dispose of all substances Sunnyside Utilities classified as "processed waste." Defendant admits that Plaintiff's counsel memorialized the agreement in a letter and that a true and correct copy of such letter is attached as Exhibit "U" to plaintiff's Amended Complaint.

43. In answer to paragraph 46, defendant admits that Kirk Woolf met with the Plaintiff. Defendant admits that the Plaintiff asserted to Mr. Woolf that the Flexo ink was aqueous in nature and not harmful. Defendant denies the remainder of the allegations in paragraph 46.

44. In answer to paragraph 47, defendant admits that a true and correct copy of the October 2, 2006 District Seven Health Department letter is attached as Exhibit "V" to plaintiff's

Amended Complaint. Defendant denies the remainder of the allegations in paragraph 47.

45. In answer to paragraph 48, defendant admits that a true and correct copy of the October 5, 2006 District Seven Health Department letter is attached as Exhibit "W" to the Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 48.

46. In answer to paragraph 49, defendant admits that a dispute arose between District Seven Health Department and the defendants. Defendant asserts that the only issue related to the dispute between District Seven Health Department and the defendants is the temporary overload caused by Plaintiff in June of 2006. Defendant admits that a true and correct copy of the Connected Notice of Intent to Re-impose Sanitary Restrictions, dated November 21, 2006, is attached as Exhibit "X."

47. In answer to paragraph 50, defendant admits the same.

48. In answer to paragraph 51, defendant admits that Sunnyside Utilities sent the letter attached as Exhibit "Z" to Plaintiff's Amended Complaint. Defendant asserts that the statements therein speak for themselves. Defendant denies the remainder of paragraph 51.

49. In answer to paragraph 52, defendant admits that Sunnyside Utilities received a letter dated December 12, 2006 from Printcraft and that such letter is attached as Exhibit "AA" to Plaintiff's Amended Complaint. Defendant asserts that such letter speaks for itself. Defendant denies the remainder of paragraph 52.

50. In answer to paragraph 53, defendant admits that

Sunnyside Utilities sent the letter attached as Exhibit "BB" to the Plaintiff's Amended Complaint. Defendant asserts that the statements therein speak for themselves. Defendant denies the remainder of paragraph 53.

51. In answer to paragraph 54, defendant admits that Sunnyside Utilities severed the sewer connection on December 15, 2006. Defendant does not have sufficient information to either admit or deny the remainder of the allegations in paragraph 54, and therefore denies the same.

52. In answer to paragraph 55, defendant admits that Sunnyside Utilities has provided documents to plaintiff establishing that Sunnyside Utilities' sewer system's capacity from 1996 when it was first constructed and installed through June of 2006 was in the amount of 500 gallons per day. Defendant also admits that Sunnyside Utilities' sewer system capacity after June 2006 was in the total capacity of 2,000 gallons per day. Defendant admits that evidence of Sunnyside Utilities' sewer system capacities are attached as Exhibit "CC" to Plaintiff's Amended Complaint. Defendant denies the remainder of paragraph 55.

53. In answer to paragraph 56, defendant admits that Sunnyside Utilities provided documentation to Plaintiff that Sunnyside Utilities measured sewer discharge into Sunnyside Utilities' sewer system from February 6, 2007 through May 16, 2007, and that the average amount of such discharges were approximately 370 gallons per day. Defendant admits that a true and correct copy of Sunnyside Utilities' calculations and measurements are attached as Exhibit "DD" to Plaintiff's Amended

Complaint. Defendant denies the remainder of paragraph 56.

54. In answer to paragraph 57, defendant admits that Sunnyside Utilities has sufficient capacity to receive all sewer discharges in accordance with the terms of the contract entered into by the parties on September 26, 2006. Defendant admits that plaintiff has demanded reconnection and that Sunnyside Utilities has refused to allow such a reconnection because of the plaintiff's intention to discharge substances and quantities prohibited by Defendant's Rules and Regulations, the agreement entered into by the parties on September 26, 2006, and applicable state and federal law.

55. In answer to paragraph 58, defendant denies the same.

56. In answer to paragraph 59, defendant re-alleges and restates all the admissions and denials set forth above in paragraphs 1 through 55 and incorporates the same by reference.

57. In answer to paragraph 60, defendant admits the same.

58. In answer to paragraph 61, defendant denies the same.

59. In answer to paragraph 62, defendant denies the same.

60. In answer to paragraph 63, defendant denies the same.

61. In answer to paragraph 64, defendant denies the same.

62. In answer to paragraph 65, defendant denies that it did not record the Third Party Beneficiary Agreement. Defendant denies that Sunnyside Utilities provided sewer services to the Plaintiff merely because Plaintiff was an occupant of the Sunnyside Industrial and Professional Park Subdivision.

63. In answer to paragraph 66, defendant denies the same.

64. In answer to paragraph 67, defendant denies the same.

65. In answer to paragraph 68, defendant admits that Sunnyside Utilities severed the sewer connection. Defendant denies the remainder of the allegations in paragraph 68.

66. In answer to paragraph 69, defendant denies the same.

67. In answer to paragraph 70, defendant denies the same.

68. In answer to paragraph 71, defendant admits the same.

69. In answer to paragraph 72, defendant admits the same.

70. In answer to paragraph 73, defendant denies the same.

71. In answer to paragraph 74, defendant denies the same.

72. In answer to paragraph 75, defendant hereby re-alleges and re-states all the admissions and denials set forth above in paragraphs 1 through 71 and incorporates the same herein by reference as if set forth fully.

73. In answer to paragraph 76, defendant denies the same.

74. In answer to paragraph 77, defendant denies the same.

75. In answer to paragraph 78, defendant denies the same.

76. In answer to paragraph 79, defendant denies the same.

77. In answer to paragraph 80, defendant denies the same.

78. In answer to paragraph 81, defendant hereby re-alleges and restates its admissions and denials to paragraphs 1 through 77 as set forth herein.

79. In answer to paragraph 82, defendant denies District Seven Health Department provided a permit for only "one to two buildings" to be connected to Sunnyside Utilities' sewer system. Defendant asserts that such permit provided for a minimum of "one to two buildings." Defendant admits that District Seven Health Department indicated in April of 2002 that no new sewer

connections were to be made to the existing system. Defendant denies that such "indication" had any legally binding effect on Sunnyside Utilities' sewer system or Sunnyside Utilities' ability to connect additional buildings to Sunnyside Utilities' sewer system.

80. In answer to paragraph 83, defendant denies the same.

81. In answer to paragraph 84, defendant denies the same.

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83. In answer to paragraph 86, defendant denies the same.

84. In answer to paragraph 87, defendant denies the same.

85. In answer to paragraph 88, defendant denies the same.

86. In answer to paragraph 89, defendant denies the same.

Defendant denies each and every subpart of paragraph 89.

87. In answer to paragraph 90, defendant denies the same.

88. In answer to paragraph 91, defendant denies the same.

89. In answer to paragraph 92, defendant hereby re-alleges and re-states its admissions and denials to paragraphs 1 through 91 as set forth herein.

90. In answer to paragraph 93, defendant denies the same.

91. In answer to paragraph 94, defendant denies the same.

Defendant denies each and every subpart of paragraph 94.

92. In answer to paragraph 95, defendant denies the same.

93. In answer to paragraph 96, defendant denies the same.

94. In answer to paragraph 97, defendant denies the same.

95. In answer to paragraph 98, defendant denies the same.

96. In answer to paragraph 99, defendant denies the same.

97. In answer to paragraph 100, defendant denies the same.

98. In answer to paragraph 101, defendant denies the same.

99. In answer to paragraph 102, defendant hereby re-alleges and re-states its admissions and denials to paragraphs 1 through 101 as set forth herein.

100. In answer to paragraph 103, defendant denies the same.

101. In answer to paragraph 104, defendant denies the same.

102. In answer to paragraph 105, defendant denies the same.

103. In answer to paragraph 106, defendant denies the same.

104. In answer to paragraph 107, defendant denies the same.

105. In answer to paragraph 108, defendant admits that Plaintiff requested any and all documents that would be associated with the property and sewer services provided by Sunnyside Utilities. Defendant admits that, in response, on September 20, 2006, Sunnyside Utilities provided Plaintiff with a copy of the Third Party Beneficiary Utility Agreement and the Sunnyside Utilities Rules and Regulations. Defendant denies the remainder of paragraph 108.

106. In answer to paragraph 109, defendant denies the same.

107. In answer to paragraph 110, defendant denies the same. Defendant denies each and every subpart of paragraph 110.

108. In answer to paragraph 111, defendant denies the same.

109. In answer to paragraph 112, defendant denies the same.

110. In answer to paragraph 113, defendant denies the same.

111. In answer to paragraph 114, defendant denies the same.

112. In answer to paragraph 115, defendant hereby re-alleges and re-states its admissions and denials to paragraphs 1 through 114 as set forth herein.

113. In answer to paragraph 116, defendant denies the same.

AFFIRMATIVE DEFENSES

114. To the extent Plaintiff has failed to satisfy and/or comply with all terms, conditions and provisions, and/or perform all of its obligations under the Third Party Beneficiary Utility Agreement, Sunnyside Utilities' Sewer Rules and Regulations, and the terms of the contract entered into between the parties on September 26, 2006, Plaintiff's claims are barred and all defendants are excused from any duty or performance claimed by Plaintiff.

115. Defendant asserts that the Plaintiff lacks standing to pursue the claims alleged on behalf of any non-party.

116. Plaintiff's damages are barred by the doctrine of accord and satisfaction.

117. Defendant asserts that Plaintiff's claims are barred by lack of privity and that Plaintiff is at most an incidental beneficiary of any agreement.

118. Defendant asserts that it has no fiduciary relationship with the Plaintiff.

119. Plaintiff's claims are barred by Plaintiff's prior and continuing breach of the contracts.

120. Plaintiff's claims are barred as a result of Plaintiff's own illegal acts.

121. To the extent Plaintiff failed to minimize or avoid some or all of the damage alleged in the Second Amended Complaint, any recovery against this defendant must be reduced in whole or in part by the amount attributable to such failures.

122. Defendant asserts that if Plaintiff is deemed to be entitled to any award of damages against defendant, such award must be offset by amounts owed to Defendant by Plaintiff as set forth in Defendant's Counterclaims hereafter.

123. Plaintiff's Second Amended Complaint, and each claim therein, is barred by the doctrines of waiver and/or estoppel.

124. Plaintiff's Second Amended Complaint, and each claim therein, is barred by the doctrine of independent intervening cause.

125. The Second Amended Complaint and each claim therein, is barred by the doctrine of laches.

126. The Second Amended Complaint, and each claim therein, is barred by the doctrine of unclean hands.

127. Plaintiff has failed to join one or more indispensable parties to this litigation.

128. The claims in the Complaint are barred by the doctrine of illegality. Defendant cannot contract with Plaintiff to commit an illegal act and enforcement of any such contract is barred. IDAPA 58.01.03.004 prohibits discharge of cooling water, backwash or back flush water, air conditioning water, water softener brine or flows which exceed the design flow of the system, without prior authorization from the Director of the Department of Environmental Quality. Plaintiff discharged and seeks to discharge the above prohibited substances and excessive flows of process water into the system. Plaintiff has not obtained approval from the Director for discharge of such substances or discharge of flows which exceed the system design and therefore any such discharges into

the system would be and are illegal.

129. Plaintiff has failed to set forth its claims with sufficient particularity to permit Defendant to raise all appropriate defenses, and therefore, Defendant reserves the right to seek leave of court to amend or supplement its Answer, including affirmative defenses, to specify further grounds for denying the claims and causes of action that are the subject of this action.

130. By reason of the filing of Plaintiff's Second Amended Complaint, SIPP has been required to retain the services of an attorney to defend this action and has incurred attorney fees and costs in such defense. In accordance with IRCP 54, Idaho Code §12-120, Idaho Code §12-121, Idaho Code §12-123, and IRCP 11(a)(1), SIPP is entitled to reimbursement of all attorney fees, expenses, and losses incurred herein in defense of Plaintiff's Second Amended Complaint and as a result of Plaintiff's actions.


PRAYER

WHEREFORE, Sunnyside Industrial and Professional Park, LLC. respectfully requests the following relief against Printcraft Press, Inc.

1. That Printcraft recover nothing by reason of its Amended Complaint and that all such claims be dismissed.
2. That Sunnyside Industrial and Professional Park be awarded all of its costs and attorney fees.
3. For such other relief, legal or equitable, to which

Sunnyside has any right or entitlement.

DATED this 28th day of April, 2008.




Mark R. Fuller
Attorney for Defendant

DEMAND FOR JURY TRIAL

Sunnyside Industrial and Professional Park, LLC hereby demands a trial by a twelve (12) person jury on all issues of fact.

DATED this 28th day of April, 2008.



Mark R. Fuller
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorneys listed below on this 28th day of April, 2008:

Document Served:

SUNNYSIDE INDUSTRIAL AND
AND PROFESSIONAL PARK'S ANSWER
TO SECOND AMENDED COMPLAINT,
AND DEMAND FOR JURY TRIAL

Attorneys Served:

Jeffrey D. Brunson, Esq.
Lance J. Schuster, Esq.
John M. Avondet, Esq.
Michael D. Gaffney, Esq.
BEARD ST. CLAIR
2105 Coronado Street
Idaho Falls, ID 83404

 X U.S. Mail
 Facsimile
 Hand Delivery



Mark R. Fuller
FULLER & CARR

MARK R. FULLER (ISB No. 2698)
FULLER & CARR
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IDAHO FALLS, ID 83405-0935
TELEPHONE: (208) 524-5400

DISTRICT 7TH JUDICIAL COURT
BONNEVILLE COUNTY IDAHO

8 APR 28 P4:11

ATTORNEY FOR DEFENDANT/COUNTER CLAIMANT SUNNYSIDE PARK UTILITIES, INC.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE**

PRINCRAFT PRESS, INC., an)	Case No. CV-06-7097
Idaho corporation,)	
Plaintiff,)	
v.)	SUNNYSIDE PARK UTILITIES,
SUNNYSIDE PARK UTILITIES,)	INC.'S ANSWER TO SECOND
INC., an Idaho corporation,)	AMENDED COMPLAINT,
SUNNYSIDE PARK OWNERS)	COUNTERCLAIMS, PRAYER FOR
ASSOCIATION, INC., an Idaho)	PUNITIVE DAMAGES, AND
corporation,)	DEMAND FOR JURY TRIAL
SUNNYSIDE)	
INDUSTRIAL AND PROFESSIONAL)	
PARK, LLC, an Idaho limited)	
liability corporation, DOYLE)	
BECK, an individual, and KIRK)	
WOOLF, an individual.)	
Defendants.)	
<hr/>	
SUNNYSIDE PARK UTILITIES,)	
INC., an Idaho corporation,)	
and SUNNYSIDE INDUSTRIAL AND)	
PROFESSIONAL PARK, LLC, an)	
Idaho limited liability)	
corporation.)	
Counterclaimants,)	
v.)	
PRINCRAFT PRESS, INC., an)	
Idaho corporation, and TRAVIS)	
WATERS, an individual.)	
Counter-defendants.)	

SUNNYSIDE PARK UTILITIES' ANSWER TO SECOND AMENDED COMPLAINT,
COUNTERCLAIMS, PRAYER FOR PUNITIVE DAMAGES AND DEMAND FOR JURY TRIAL - 1

COMES NOW the Defendant, Sunnyside Park Utilities, Inc., an Idaho corporation (hereafter "Sunnyside Park Utilities"), and in response to the Second Amended Complaint filed by Plaintiff, states and alleges as follows:

1. Defendant denies each and every allegation set forth in the Amended Complaint except as expressly admitted herein.

2. Plaintiff's Complaint fails to state a cause of action upon which relief can be granted.

3. In response to paragraph 1, defendant denies that this is an action arising out of certain disclosures the defendant failed to make. Defendant asserts that this is an action arising out of the disconnection of Printcraft Press's sewer connection to Sunnyside Park Utilities' septic system. The defendant admits that there is a central septic system located in the Sunnyside Industrial and Professional Park subdivision which is operated and maintained by Sunnyside Park Utilities.

4. In answer to paragraphs 2, 3, 4, 5, 6, and 7 defendant admits the same.

5. In answer to paragraphs 8 and 9 defendant admits the same.

6. In answer to paragraph 10, defendant admits that Sunnyside Industrial and Professional Park, LLC (hereafter "SIPP") completed and filed with District Seven Health Department a septic permit for the installation of a septic system that would service a minimum of one to two buildings. Defendant admits that a copy of District Seven Health Department's septic permit is attached as Exhibit "A" to the Complaint.

7. In answer to paragraph 11, defendant admits the same.

8. In answer to paragraph 12, defendant admits the same.

9. In answer to paragraph 13, defendant admits that on August 4, 1999, SIPP and Bonneville County entered into a Development Agreement. The defendant denies that SIPP promised to provide all street improvements and utilities as were necessary to be completed. The agreement specifically states that the "owner(s)" will construct said needed utility or street improvements. The agreement does not obligate the "Developer" to construct needed utility or street improvements.

10. In answer to paragraph 14, defendant admits the same.

11. In answer to paragraph 15, defendant denies the same.

12. In answer to paragraph 16, defendant admits the same.

13. In answer to paragraph 17, defendant admits that a meeting was held. However, defendant denies the remainder of the allegations contained in paragraph 17.

14. In answer to paragraph 18, defendant admits the same.

15. In answer to paragraph 19, defendant denies that the letter sent by District Seven Health Department memorialized the meeting held on March 29, 2002. Defendant admits that the letter attached as Exhibit "F" to Plaintiff's complaint is a true and correct copy of the letter sent by District Seven Health Department.

16. In answer to paragraph 18 [sic], defendant denies that it entered into an agreement with the Defendant Sunnyside Park Owners Association, Inc. (hereafter "SPOA") for the providing of water and sewer services to the subdivision identified in the plat

map. Defendant asserts that it entered into an agreement with SPOA, to provide sewer services present and future owners and occupants of any subdivisions which were being or might one day be served by Sunnyside Park Utilities' sewer facilities.

17. In answer to paragraph 19 [sic], defendant admits the same.

18. In answer to paragraph 20, defendant admits that the Third Party Beneficiary Agreement states: "This Agreement shall also be binding upon and shall inure to the benefit of...all present and future owners or occupants." Defendant denies the remainder of paragraph 20.

19. In answer to paragraph 21, Defendant admits the same.

20. In answer to paragraph 22, Defendant denies that the Agreement is only binding on Plaintiff if the Agreement was recorded. Defendant specifically denies that the Agreement contains specific language in several places indicating that the Third Party Beneficiary Agreement would be recorded "so as to put all persons on notice that any properties receiving sewer services would be subject to the terms of the Agreement." Defendant admits that a true and correct copy of the Third Party Beneficiary Utility Agreement is attached as Exhibit "G" to plaintiff's Complaint.

21. In answer to paragraph 23, defendant denies the same.

22. In answer to paragraph 24 and 25, defendant admits the same.

23. In answer to paragraph 26, defendant admits that on or about September 12, 2005 CTR Development, LLC, the owner of the

property at that time, entered into an agreement with Sunnyside Park Utilities for sewer services and paid the \$1,800.00 connection fee. Sunnyside Park Utilities thereafter allowed the sewer connection to be made to the building currently occupied by Plaintiff. Defendant admits that a true and correct copy of Check No. 5896 made by CTR Development to Sunnyside Park Utilities is attached as Exhibit "I" to Plaintiff's First Amended Complaint.

24. In answer to paragraph 27, defendant based upon information provided by the plaintiff, admits the same. Defendant was not a party to the described leases.

25. In answer to paragraph 28, defendant admits that Sunnyside Park Utilities specifically requested from CTR Development copies of drawings or proposed drawings concerning the building which would be built and located on the premises. Defendant does not have sufficient information to determine if Plaintiff provided the requested documents or CTR Development provided the requested documents. Therefore, Defendant cannot admit or deny whether or not Plaintiff (as opposed to CTR Development) provided the drawings to Sunnyside Park Utilities and its officers and/or directors.

26. In answer to paragraph 29, defendant denies the same.

27. In answer to paragraph 30, defendant denies the same.

28. In answer to paragraph 31, Defendant admits that either Plaintiff or CTR Development provided the document attached as Exhibit "K" to defendant. Defendant denies that it received a fourth page showing the floor plan or layout of the second floor. Defendant was verbally informed that the second floor was to be

used solely for storage.

29. In answer to paragraph 32, defendant admits the same.

30. In answer to paragraph 33, defendant admits that there were 10 or 11 connections to the sewer system operated by defendant in June of 2006. Defendant admits that one of the sewer connections was to the property owned by J&LB Properties and that Plaintiff was occupying J&LP Properties' building as a month-to-month tenant. Defendant denies the remainder of the allegations in paragraph 33.

31. In answer to paragraph 34, defendant admits that in June 2006, defendant's sewer system experienced a temporary overload as the result of excessive discharges from Printcraft. The cause of the overload was unknown to defendant at that time. Defendant admits that it immediately reported the temporary overload to District Seven Health Department and that an onsite investigation was conducted by District Seven Health Department. Defendant denies the remainder of paragraph 34.

32. In answer to paragraph 35, defendant admits that a true and correct copy of the June 28, 2006 letter from District Seven Health Department to SIPP and Sunnyside Park Utilities is attached as Exhibit "L" to Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 35.

33. In answer to paragraph 36, Defendant admits that a true and correct copy of the July 6, 2006 letter is attached as Exhibit "M" to Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 36.

34. In answer to paragraph 37, Defendant admits that an

additional septic permit for installation of additional capacity was obtained. Defendant admits that a true and correct copy of the septic permit is attached as Exhibit "N" to Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 37.

35. In answer to paragraph 38, defendant admits that District Seven Health Department physically inspected the installation of the expansion and repairs of the septic system which were conducted and completed by Sunnyside Park Utilities. Defendant admits that a true and correct copy of the Septic System Inspection Report is attached to Plaintiff's Amended Complaint as Exhibit "O." Defendant denies the remainder of paragraph 38.

36. In answer to paragraph 39, defendant admits the same.

37. In answer to paragraph 40, defendant admits that a copy of the August 23, 2006 letter from Doyle Beck is attached as Exhibit "Q" to Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 40.

38. In answer to paragraph 41, defendant admits that a copy of the September 13, 2006 letter from Greg Crockett is attached as Exhibit "R" to Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 41.

39. In answer to paragraph 42, defendant admits that a copy of the September 6, 2006 letter from Doyle Beck is attached to Plaintiff's Amended Complaint as Exhibit "S". Defendant denies the remainder of paragraph 42.

40. In answer to paragraph 43, defendant admits that Plaintiff requested from Sunnyside Park Utilities a copy of all

documents, contracts, agreements, or the like governing Sunnyside Park Utilities' sewer utility services. Defendant denies the remainder of the allegations in paragraph 43.

41. In answer to paragraph 44, defendant admits that the Third Party Beneficiary Utility Agreement and the Rules and Regulations were provided to Printcraft. Defendant admits that a true and correct copy of Doyle Beck's September 20, 2006 letter is attached as Exhibit "T" to Plaintiff's Amended Complaint. Defendant denies the remainder of paragraph 44.

42. In answer to paragraph 45, defendant admits that Sunnyside Park Utilities and the plaintiff met in compromise negotiations at the plaintiff's premises to discuss the issues of the plaintiff's discharges and other compromise negotiations. Defendant admits that plaintiff later agreed to collect and dispose of all substances Sunnyside Park Utilities classified as "processed waste" which Sunnyside Park Utilities classifies as any non-human wastes. Defendant admits that Plaintiff's counsel memorialized the agreement in a letter and that a true and correct copy of such letter is attached as Exhibit "U" to plaintiff's Amended Complaint.

43. In answer to paragraph 46, defendant admits that Kirk Woolf met with the Plaintiff. Defendant admits that the Plaintiff asserted to Mr. Woolf that the Flexo ink was aqueous in nature and not harmful. Defendant denies the remainder of the allegations in paragraph 46.

44. In answer to paragraph 47, defendant admits that a true and correct copy of the October 2, 2006 District Seven Health

Department letter is attached as Exhibit "V" to plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 47.

45. In answer to paragraph 48, defendant admits that a true and correct copy of the October 5, 2006 District Seven Health Department letter is attached as Exhibit "W" to the Plaintiff's Amended Complaint. Defendant denies the remainder of the allegations in paragraph 48.

46. In answer to paragraph 49, defendant admits that a dispute arose between District Seven Health Department and the defendants. Defendant asserts that the only issue related to the dispute between District Seven Health Department and the defendants is the temporary overload caused by Plaintiff in June of 2006. Defendant admits that a true and correct copy of the Corrected Notice of Intent to Re-impose Sanitary Restrictions, dated November 21, 2006, is attached as Exhibit "X."

47. In answer to paragraph 50, defendant admits the same.

48. In answer to paragraph 51, defendant admits that Sunnyside Park Utilities sent the letter attached as Exhibit "Z" to Plaintiff's Amended Complaint. Defendant asserts that the statements therein speak for themselves. Defendant denies the remainder of paragraph 51.

49. In answer to paragraph 52, defendant admits that Sunnyside Park Utilities received a letter dated December 12, 2006 from Printcraft and that such letter is attached as Exhibit "AA" to Plaintiff's Amended Complaint. Defendant asserts that such letter speaks for itself. Defendant denies the remainder of

paragraph 52.

50. In answer to paragraph 53, defendant admits that Sunnyside Park Utilities sent the letter attached as Exhibit "BB" to the Plaintiff's Amended Complaint. Defendant asserts that the statements therein speak for themselves. Defendant denies the remainder of paragraph 53.

51. In answer to paragraph 54, defendant admits that it severed the sewer connection on December 15, 2006. Defendant does not have sufficient information to either admit or deny the remainder of the allegations in paragraph 54, and therefore denies the same.

52. In answer to paragraph 55, defendant admits that Sunnyside Park Utilities has provided documents to plaintiff establishing that Sunnyside Park Utilities' sewer system's capacity from 1996 when it was first constructed and installed through June of 2006 was in the amount of 500 gallons per day. Defendant also admits that Sunnyside Park Utilities' sewer system capacity after June 2006 was in the total capacity of 2,000 gallons per day. Defendant admits that evidence of Sunnyside Park Utilities' sewer system capacities are attached as Exhibit "CC" to Plaintiff's Amended Complaint. Defendant denies the remainder of paragraph 55.

53. In answer to paragraph 56, defendant admits that Sunnyside Park Utilities provided documentation to Plaintiff that Sunnyside Park Utilities measured sewer discharge into Sunnyside Park Utilities' sewer system from February 6, 2007 through May 16, 2007, and that the average amount of such discharges were

approximately 370 gallons per day. Defendant admits that a true and correct copy of Sunnyside Park Utilities' calculations and measurements are attached as Exhibit "DD" to Plaintiff's Amended Complaint. Defendant denies the remainder of paragraph 56.

54. In answer to paragraph 57, defendant admits that it has sufficient capacity to receive all sewer discharges in accordance with the terms of the contract entered into by the parties on September 26, 2006. Defendant admits that plaintiff has demanded reconnection and that Defendant has refused to allow such a reconnection because of the plaintiff's intention to discharge substances and quantities prohibited by Defendant's Rules and Regulations, the agreement entered into by the parties on September 26, 2006, and applicable state and federal law.

55. In answer to paragraph 58, defendant denies the same.

56. In answer to paragraph 59, defendant re-alleges and restates all the admissions and denials set forth above in paragraphs 1 through 55 and incorporates the same by reference.

57. In answer to paragraph 60, defendant admits the same.

58. In answer to paragraph 61, defendant denies the same.

59. In answer to paragraph 62, defendant denies the same.

60. In answer to paragraph 63, defendant denies the same.

61. In answer to paragraph 64, defendant denies the same.

62. In answer to paragraph 65, defendant denies that it did not record the Third Party Beneficiary Agreement. Defendant denies that it provided sewer services to the Plaintiff merely because Plaintiff was an occupant of the Sunnyside Industrial and Professional Park Subdivision.

63. In answer to paragraph 66, defendant denies the same.

64. In answer to paragraph 67, defendant denies the same.

65. In answer to paragraph 68, defendant admits that it severed the sewer connection. Defendant denies the remainder of the allegations in paragraph 68.

66. In answer to paragraph 69, defendant denies the same.

67. In answer to paragraph 70, defendant denies the same.

68. In answer to paragraph 71, defendant admits the same.

69. In answer to paragraph 72, defendant admits the same.

70. In answer to paragraph 73, defendant denies the same.

71. In answer to paragraph 74, defendant denies the same.

72. In answer to paragraph 75, defendant hereby re-alleges and re-states all the admissions and denials set forth above in paragraphs 1 through 71 and incorporates the same herein by reference as if set forth fully.

73. In answer to paragraph 76, defendant denies the same.

74. In answer to paragraph 77, defendant denies the same.

75. In answer to paragraph 78, defendant denies the same.

76. In answer to paragraph 79, defendant denies the same.

77. In answer to paragraph 80, defendant denies the same.

78. In answer to paragraph 81, defendant hereby re-alleges and restates its admissions and denials to paragraphs 1 through 77 as set forth herein.

79. In answer to paragraph 82, defendant denies District Seven Health Department provided a permit for only "one to two buildings" to be connected to defendants building. Defendant asserts that such permit provided for a minimum of "one to two

buildings." Defendant admits that District Seven Health Department indicated in April of 2002 that no new sewer connections were to be made to the existing system. Defendant denies that such "indication" had any legally binding effect on defendant's sewer system or defendant's ability to connect additional buildings to defendant's sewer system.

80. In answer to paragraph 83, defendant denies the same.

81. In answer to paragraph 84, defendant denies the same.

82. In answer to paragraph 85, defendant denies the same.

83. In answer to paragraph 86, defendant denies the same.

84. In answer to paragraph 87, defendant denies the same.

85. In answer to paragraph 88, defendant denies the same.

86. In answer to paragraph 89, defendant denies the same.

Defendant denies each and every subpart of paragraph 89.

87. In answer to paragraph 90, defendant denies the same.

88. In answer to paragraph 91, defendant denies the same.

89. In answer to paragraph 92, defendant hereby re-alleges and re-states its admissions and denials to paragraphs 1 through 91 as set forth herein.

90. In answer to paragraph 93, defendant denies the same.

91. In answer to paragraph 94, defendant denies the same.

Defendant denies each and every subpart of paragraph 94.

92. In answer to paragraph 95, defendant denies the same.

93. In answer to paragraph 96, defendant denies the same.

94. In answer to paragraph 97, defendant denies the same.

95. In answer to paragraph 98, defendant denies the same.

96. In answer to paragraph 98, defendant denies the same.

97. In answer to paragraph 100, defendant denies the same.

98. In answer to paragraph 101, defendant denies the same.

99. In answer to paragraph 102, defendant hereby re-alleges and re-states its admissions and denials to paragraphs 1 through 101 as set forth herein.

100. In answer to paragraph 103, defendant denies the same.

101. In answer to paragraph 104, defendant denies the same.

102. In answer to paragraph 105, defendant denies the same.

103. In answer to paragraph 106, defendant denies the same.

104. In answer to paragraph 107, defendant denies the same.

105. In answer to paragraph 108, defendant admits that Plaintiff requested any and all documents that would be associated with the property and sewer services provided by Sunnyside Park Utilities. Defendant admits that, in response, on September 20, 2006, Sunnyside Park Utilities provided Plaintiff with a copy of the Third Party Beneficiary Utility Agreement and the Sunnyside Park Utilities Rules and Regulations. Defendant denies the remainder of paragraph 108.

106. In answer to paragraph 109, defendant denies the same.

107. In answer to paragraph 110, defendant denies the same. Defendant denies each and every subpart of paragraph 110.

108. In answer to paragraph 111, defendant denies the same.

109. In answer to paragraph 112, defendant denies the same.

110. In answer to paragraph 113, defendant denies the same.

111. In answer to paragraph 114, defendant denies the same.

112. In answer to paragraph 115, defendant hereby re-alleges and re-states its admissions and denials to paragraphs 1 through

114 as set forth herein.

113. In answer to paragraph 116, defendant denies the same.

AFFIRMATIVE DEFENSES

114. To the extent Plaintiff has failed to satisfy and/or comply with all terms, conditions and provisions, and/or perform all of its obligations under the Third Party Beneficiary Utility Agreement, Sunnyside Park Utilities' Sewer Rules and Regulations, and the terms of the contract entered into between the parties on September 26, 2006, Plaintiff's claims are barred and defendant is excused from any duty or performance claimed by Plaintiff.

115. Defendant asserts that the Plaintiff lacks standing to pursue the claims alleged on behalf of any non-party.

116. Plaintiff's damages are barred by the doctrine of accord and satisfaction.

117. Defendant asserts that Plaintiff's claims are barred by lack of privity and that Plaintiff is at most an incidental beneficiary of any agreement.

118. Defendant asserts that it has no fiduciary relationship with the Plaintiff.

119. Plaintiff's claims are barred by Plaintiff's prior and continuing breach of the contracts.

120. Plaintiff's claims are barred as a result of Plaintiff's own illegal acts.

121. To the extent Plaintiff failed to minimize or avoid some or all of the damage alleged in the Second Amended Complaint, any recovery against this defendant must be reduced in whole or in part by the amount attributable to such failures.

122. Defendant asserts that if Plaintiff is deemed to be entitled to any award of damages against defendant, such award must be offset by amounts owed to Defendant by Plaintiff as set forth in Defendant's Counterclaims hereafter.

123. Plaintiff's Second Amended Complaint, and each claim therein, is barred by the doctrines of waiver and/or estoppel.

124. Plaintiff's Second Amended Complaint, and each claim therein, is barred by the doctrine of independent intervening cause.

125. The Second Amended Complaint and each claim therein, is barred by the doctrine of laches.

126. The Second Amended Complaint, and each claim therein, is barred by the doctrine of unclean hands.

127. Plaintiff has failed to join one or more indispensable parties to this litigation.

128. The claims in the Complaint are barred by the doctrine of illegality. Defendant cannot contract with Plaintiff to commit an illegal act and enforcement of any such contract is barred. IDAPA 58.01.03.004 prohibits discharge of cooling water, backwash or back flush water, air conditioning water, water softener brine or flows which exceed the design flow of the system, without prior authorization from the Director of the Department of Environmental Quality. Plaintiff discharged and seeks to discharge the above prohibited substances and excessive flows of process water into the system. Plaintiff has not obtained approval from the Director for discharge of such substances or discharge of flows which exceed the system design and therefore any such discharges into

the system would be and are illegal.

129. Plaintiff has failed to set forth its claims with sufficient particularity to permit Defendant to raise all appropriate defenses, and therefore, Defendant reserves the right to seek leave of court to amend or supplement its Answer, including affirmative defenses, to specify further grounds for denying the claims and causes of action that are the subject of this action.

130. By reason of the filing of Plaintiff's Second Amended Complaint, Sunnyside Park Utilities has been required to retain the services of an attorney to defend this action and has incurred attorney fees and costs in such defense. In accordance with IRCP 54, Idaho Code §12-120, Idaho Code §12-121, Idaho Code §12-123, IRCP 11(a)(1), and the Sewer Rules and Regulations, Article IV, Section 2, Sunnyside Park Utilities is entitled to reimbursement of all attorney fees, expenses, and losses incurred herein in defense of Plaintiff's Second Amended Complaint and as a result of Plaintiff's actions.

COUNTERCLAIMS

Sunnyside Park Utilities, Inc., hereby alleges the following counterclaims against Printcraft Press, Inc., pursuant to IRCP 13:

FACTS COMMON TO ALL COUNTERCLAIMS

1. Sunnyside Park Utilities, Inc., (hereafter "Sunnyside Park Utilities") is an Idaho corporation with its principal place of business in Bonneville County, Idaho.

2. Sunnyside Park Utilities engages in the business of providing water and sewer service to the owners and occupants of

certain properties, buildings, and other improvements in accordance with the Third Party Beneficiary Utility Agreement and Sunnyside Park Utilities' Rules and Regulations.

3. Printcraft Press, Inc., (hereafter "Printcraft") is an Idaho corporation with its principle place of business located at 3834 South Professional Way, Idaho Falls, Bonneville County, Idaho.

4. Travis Waters, at all relevant times, was an officer of Printcraft Press, Inc., and is an individual residing in Bonneville County, Idaho.

5. That jurisdiction and venue of this action arise in Bonneville County, State of Idaho.

6. That pursuant to an agreement with CTR Development, LLC., (hereafter "CTR Development") Sunnyside Park Utilities agreed to provide water and sewer service to the building located at 3834 South Professional Way, (hereafter "the property").

7. That on or about September 12, 2005 Travis Waters acting on behalf of CTR Development and Printcraft Press provided blueprints of a building being constructed by CTR Development on the property.

8. That Doyle Beck on behalf of Sunnyside Industrial and Professional Park, LLC and Sunnyside Park Utilities, Inc. asked Travis Waters what the sewage needs for the building would be and Mr. Waters stated that there would be sewage from 30 employees.

9. Provision of water and sewer services to CTR Development was to be regulated by the Sunnyside Park Utilities' Rules and Regulations, the Third Party Beneficiary Utility

Agreement, and applicable state and federal rules and regulations. That a copy of such Agreement and applicable Rules and Regulations are attached as Exhibits "A" and "B" to Plaintiff's Original Complaint.

10. In January of 2006, CTR Development sold the property and any rights to use Sunnyside Park Utilities' sewer services to J&LB Properties, Inc.

11. J&LB Properties, Inc., thereafter entered into a written lease agreement with CTR Management, LLC. (hereafter "CTR Management"). The lease agreement specifically provided that the lessee, CTR Management, was responsible for furnishing and paying for all utilities and that J&LB Properties had no obligation to furnish any utilities to the building. That a copy of such Lease Agreement is attached as Exhibit "J" to Plaintiff's Second Amended Complaint.

12. Printcraft is a sub-tenant in the subject property pursuant to an oral, month-to-month sub-lease agreement between Printcraft and CTR Management, and possesses no other rights in the subject property.

13. Printcraft began discharging wastes into Sunnyside Park Utilities sewer system on or after January 23, 2006.

14. Printcraft's discharges included sewage from 40 or more employees, hazardous chemicals, water softener brine, reverse osmosis water, fountain concentrate, isopropyl alcohol, ink, and multiple other discharges that were harmful to Sunnyside Park Utilities' sewer system, including flows beyond the capacity of Sunnyside Park Utilities' sewer system.

16. Neither Printcraft, nor CTR Management, ever informed Sunnyside Park Utilities that the lease agreement with J&LB Properties specifically excluded CTR Management and Printcraft Press from using J&LB Properties' rights to the sewer connection with Sunnyside Park Utilities.

17. Printcraft Press either negligently did not read, or intentionally did not obey the multiple warnings and prohibitions contained in the Material Safety Data Sheets for the noxious and hazardous chemicals Printcraft discharged into the Sunnyside Park Utilities' sewer system.

18. On or about June 9, 2006, Printcraft's discharges caused Sunnyside Park Utilities' sewer system to overload and caused sewage to pond on the ground near Sunnyside Park Utilities' drain field.

19. Defendant observed significant quantities of ink in the sewage on the ground as a result of the June 9, 2006 overload.

20. On or about July 2, 2006, Sunnyside Park Utilities obtained a temporary expansion permit and increased the capacity of the sewer system in order to avoid future overloads of the system. At that time Sunnyside Park Utilities was still unaware of all the various types and quantities of discharges coming from Printcraft into the sewer system.

21. In August 2006, Sunnyside Park Utilities discovered that Printcraft had been discharging reverse osmosis water, ink, chemicals and other harmful and illegal substances into the sewer system.

22. On or about September 6, 2006 Sunnyside Park Utilities

specifically informed Printcraft that the sewer system was only designed to accommodate human waste and that Printcraft needed to restrict its discharge quantities and cease discharging chemicals, processed water, and ink into the sewer system.

23. On or about September 20, 2006, Sunnyside Park Utilities provided Printcraft with a copy of the Third Party Beneficiary Utility Agreement and Sunnyside Park Utilities' Rules and Regulations.

24. On September 26, 2006, Printcraft Press after receipt of the Third Party Beneficiary Agreement and the Rules and Regulations acknowledged that it was aware of the system limitations and of the disputes with the Department of Environmental Quality and District Seven Health Department as a result of the June, 2006 overload, and contracted to collect and dispose of all substances that Sunnyside Park Utilities classified as "processed wastes," including all reverse osmosis water, in exchange for future sewer services.

25. During December of 2006, Sunnyside Park Utilities discovered that Printcraft continued discharging substances that Sunnyside Park Utilities classified as "processed wastes."

26. On December 11, 2006, Sunnyside Park Utilities sent a letter to Printcraft, demanding that Printcraft cease all discharges of "processed wastes" immediately.

27. On December 13, 2006, Sunnyside Park Utilities again requested that Printcraft cease all discharges of "processed wastes" and informed Printcraft that Printcraft must allow monitoring of its discharges if Printcraft desired to continue

receiving sewer services. Printcraft refused to allow its discharges to be monitored only because Printcraft was knowingly and intentionally discharging "processed wastes" and had no intention of ceasing to discharge "processed wastes" despite the agreement reached between Printcraft and Sunnyside Park Utilities on or about September 26, 2006.

28. On December 15, 2006, Sunnyside Park Utilities severed the sewer connection to the building Printcraft is occupying.

29. On December 19, 2006, Printcraft caused its portable, non-discharging above ground sewer system, with a capacity of 1,000 gallons, to overload, allowing sewage to pond on the ground near Printcraft's building. Multiple additional overloads have occurred and are continuing.

30. On December 20, 2006, the Department of Environmental Quality conducted an investigation of the sewage on the ground and determined that "Odor of wastewater smelled like ink. Color of wastewater was a dark blue to black color." A copy of the investigation letter dated January 5, 2007 is attached as Exhibit "1."

31. The investigation by the Department of Environmental Quality, only five days after Sunnyside Park Utilities severed the sewer connection, confirms that Printcraft was discharging "processed wastes."

32. On April 2, 2008, Printcraft's agents, Lance Schuster and Robert Starr, entered onto property owned by Sunnyside Park Utilities.

33. Sunnyside Park Utilities did not give authorization for

Lance Schuster, Robert Starr, or any other agent of Printcraft to enter onto Sunnyside Park Utilities' property, and Sunnyside Park Utilities had placed "No Trespassing" signs not less than every 660 feet on the property.

COUNT I: BREACH OF CONTRACT

30. Defendant re-alleges paragraphs 1 through 25 by reference.

31. Defendant and Plaintiff entered into a binding contractual relationship as follows:

a. On September 6, 2006, Defendant informed Plaintiff that Defendant's sewer system had capacity only to collect and dispose of "human waste" and that no other wastes would be allowed into the system.

b. On September 19, 2006, Plaintiff requested a copy of any contracts, agreements, documents, or the like, which were applicable to parties receiving sewer services from Sunnyside Park Utilities.

c. On September 20, 2006, Defendant provided Plaintiff with Defendant's Third Party Beneficiary Utility Agreement and Defendant's Rules and Regulations for sewer service. Such Rules and Regulations specifically define "sewage" as blackwaste or blackwater (also known as "human wastes") and specifically excludes a lengthy list of "processed wastes" from being discharged into the sewer system.

d. On September 20, 2006 Sunnyside Park Utilities offered to continue accepting sewage from Printcraft, only if Printcraft would agree to cease discharging any "processed

wastes" into the system. Sunnyside Park Utilities specifically identified substances and flows which it classified to be "processed wastes."

e. On or about September 26, 2006, Plaintiff agreed to abide by the September 20, 2006 offer and agreed not to discharge any substance Defendant classified as "processed waste" into Sunnyside Park Utilities' sewer system.

f. After September 26, 2006 Defendant accepted Plaintiff's sewer discharges in exchange for Plaintiff's payment of the monthly sewer service fee of \$17.50.

32. Defendant substantially performed its obligations under the contract from September 26, 2006 until December 15, 2006 and did not materially breach the contract.

33. Plaintiff materially breached the contract by discharging water softener brine, hazardous chemicals, substances that are harmful to Defendant's sewer facilities, inks, and excessive flow of discharges.

34. As a direct result of the acts of Plaintiff, Defendant was required to disconnect Plaintiff from the sewer system on December 15, 2006. The costs of such disconnection included \$1,228.64 for a backhoe and operator to perform the disconnection and \$1,420.00 for inspection and supervision by the Defendant.

35. As a direct and proximate result of the breaches of contract by Plaintiff, Defendant is entitled to damages of \$2,648.64 or such other amount as may be proven at trial.

36. In accordance with IRCP 54, Idaho Code §12-120, 12-121, 12-123, IRCP 11(a)(1), and the Sewer Rules and Regulations,

Article IV, Section 2, Sunnyside Park Utilities is entitled to reimbursement of all attorney fees, expenses, and losses incurred herein in prosecution of Sunnyside Park Utilities' counterclaims.

COUNT II. COVENANT OF GOOD FAITH AND FAIR DEALING

37. Sunnyside Park Utilities re-alleges paragraphs 1 through 32 by reference.

38. The contract between these parties includes material implied covenants.

39. Implied in every contract is a covenant that the parties will act in good faith and fair dealing with each other with respect to the terms of the contract.

40. Printcraft has failed to deal fairly with and act in good faith towards Sunnyside Park Utilities and has breached the implied covenant of good faith and fair dealing.

41. Printcraft's breach of the implied covenant of good faith and fair dealing has unfairly frustrated Sunnyside Park Utilities' right to receive the benefits of the contract.

42. Printcraft's breach of the implied covenant of good faith and fair dealing is a material breach of the contract and is the direct and proximate cause of damages suffered by Sunnyside Park Utilities, which damages are continuing.

43. Sunnyside Park Utilities has suffered damages and will hereafter suffer damages in an amount to be proven at trial in excess of the jurisdictional amount of this Court.

COUNT III. TRESPASS

44. Sunnyside Park Utilities re-alleges paragraphs 1 through 39 by reference.

45. Printcraft, through its agents, Lance Schuster and Robert Starr went upon Sunnyside Park Utilities' property on April 2, 2008.

46. Sunnyside Park Utilities did not consent to Printcraft's entry upon Sunnyside Park Utilities' property.

47. Sunnyside Park Utilities' property, at the time of the entry upon the property by Printcraft's agents, was posted with "No Trespassing" signs, spaced at intervals of not less than one (1) notice per six hundred sixty (660) feet along such real property.

48. Sunnyside Park Utilities has been damaged in an amount to be proven at trial.

49. Sunnyside Park Utilities is entitled to treble the amount of damages which may be assessed or fifty dollars (\$50.00), whichever is greater, under Idaho Code §6-202.

50. Sunnyside Park Utilities is entitled to a reasonable attorney's fee, which shall be taxed as costs, pursuant to Idaho Code §6-202.

COUNT IV. FRAUD

51. Sunnyside Park Utilities re-alleges paragraphs 1 through 50 by reference.

52. Printcraft Press, through its Director, Travis Waters stated that the disposal needs of the building Printcraft intended to occupy, was capacity for disposal of waste generated by thirty (30) employees.

53. Such statement was false as Printcraft Press's sewage needs included capacity for disposal of waste generated by in

excess of forty (40) employees, reverse osmosis water totaling several thousand gallons of waste per day, water softener brine, inks, diluted chemicals, air conditioner water, and other hazardous wastes.

54. Such statement was material because had Sunnyside Park Utilities known the truth of the matter, it would never have allowed Printcraft to discharge any substances into the sewer system, because Sunnyside Park Utilities would have known that the discharges coming from Printcraft would cause the system to fail, and would subject Sunnyside Park Utilities to criminal penalties.

55. Printcraft Press and Travis Waters knew the statement was false as Travis Waters was familiar with the printing industry, Travis Waters had owned and operated a printing business for several years, Travis Waters had in his possession Material Safety Data Sheets provided by the suppliers of chemicals, inks, and hazardous substances, Travis Waters knew the specific operations of Printcraft, and Travis Waters was familiar with the design of the building, the future location of the printing equipment in the building, the types of discharges that could be expected from each piece of printing equipment, water softner equipment, and reverse osmosis equipment in the building, and the substances and quantities that Printcraft customarily discharged directly into sinks and drains without any pre-treatment.

56. Sunnyside Park Utilities did not know that the statement was false, as the only other information it had been provided by Printcraft through Travis Waters were the building plans which stated the word "Printcraft," and showed only toilets

and bathroom sinks. The plans did not designate any of the equipment Printcraft planned to use and did not designate some of the sinks or drains that Printcraft intended to discharge chemicals, inks, and other substances into. The plans did not indicate that Printcraft intended to use a reverse osmosis system, a water softener system, or air conditioning units.

57. Printcraft Press and Travis Waters intended Sunnyside Park Utilities to rely upon the statement because then Printcraft Press would only have to pay \$17.50 per month in order to receive sewer services. If Printcraft Press had not misrepresented its sewage needs to Sunnyside Park Utilities, Printcraft Press would have been forced to develop its own sewer system, at significant cost.

58. Sunnyside Park Utilities did rely upon the statement and allowed the connection of the building to occur and provided the building with sewer services until December 15, 2006.

59. Sunnyside Park Utilities' reliance was reasonable under all of the circumstances because Sunnyside Park Utilities asked Printcraft to identify its disposal needs, and Sunnyside Park Utilities reasonably expected Printcraft to truthfully disclose what such disposal needs would be.

60. Sunnyside Park Utilities suffered damages proximately caused by reliance on the false statement, including failure of the system, litigation between Sunnyside Park Utilities the Department of Environmental Quality and District Seven Health Department and costs to expand the sewer system.

61. Sunnyside Park Utilities has suffered damages in an

amount to be proven at trial.

COUNT V. CONSTRUCTIVE FRAUD

62. Sunnyside Park Utilities re-alleges paragraphs 1 through 61 by reference.

63. Printcraft Press and Travis Waters failed to disclose the substances, chemicals, inks, and flows that Printcraft Press intended to discharge into the system, prior to any discharge of such substances into the system.

64. Printcraft Press and Travis Waters were aware of, and specifically knew about the substances and flows Printcraft Press intended to discharge into Sunnyside Park Utilities' septic system. In failing to disclose this information to Sunnyside Park Utilities, Printcraft Press and Travis Waters are to be treated as if they had represented that none of the substances would be discharged into the septic system, other than the waste of 30 employees.

65. In failing to disclose to Sunnyside Park Utilities the substances and flows that would be discharged by Printcraft Press, both Printcraft Press and Travis Waters are chargeable with the falsity of that statement.

66. The information regarding the substances Printcraft Press would discharge into Sunnyside Park Utilities' septic system was material in that Sunnyside Park Utilities' was not given the opportunity to determine whether it, in fact wanted to proceed with accepting Printcraft Press's sewage, when such sewage would cause the septic system to fail and subject Sunnyside Park Utilities to criminal sanctions.

67. Printcraft Press and Travis Waters were aware of the failure to disclose and knew that Sunnyside Park Utilities would have no way of discovering the true nature of Printcraft Press's discharges without disclosure.

68. Sunnyside Park Utilities was ignorant of, and had no way of knowing, the types and quantities of discharges coming from Printcraft Press until after Printcraft Press had caused the septic system to overload.

69. Sunnyside Park Utilities relied upon the nondisclosure of the substances and flows Printcraft was discharging into the system, by allowing Printcraft to discharge its sewage into Sunnyside Park Utilities' septic system until December 15, 2006.

70. Sunnyside Park Utilities was justified in relying upon the nondisclosures by Printcraft and Travis Waters because Sunnyside Park Utilities specifically asked Travis Waters to identify the disposal needs for the building, and Sunnyside Park Utilities relied upon Travis Waters to make a truthful and full disclosure of what the building's disposal needs would be.

71. All of the damages and issues that have arisen as a result of the overflow in June 2006, are a result of Printcraft Press's and Travis Waters' failure to disclose to Sunnyside Park Utilities the substances that Printcraft intended to discharge into the septic system. Had Sunnyside Park Utilities known of the substances and flows that Printcraft intended to discharge into the septic system, it never would have allowed Printcraft to discharge anything into the septic system. All of the damages set forth herein would have been avoided if Sunnyside Park Utilities

had been told by Printcraft Press and Travis Waters the true nature of Printcraft's disposal needs.

COUNT VI. NUISANCE ABATEMENT

72. Sunnyside Park Utilities re-alleges paragraphs 1-71 by reference.

73. On or about December 15, 2006, Printcraft Press began discharging its human sewage and industrial process wastewater into an above ground container, in a location that is easily visible to the general public, located on the county right of way, and within a few feet of a public roadway in the Sunnyside Industrial and Professional Park subdivision.

74. From December 15, 2006 to the present, Printcraft has added additional above ground containers, and now Printcraft discharges its sewage into three above ground containers, located on a trailer, which is currently parked in the county right-of-way and directly above Sunnyside Park Utilities' water lines, water meter, and water valve.

75. From December 15, 2006 to the present, Printcraft has caused or allowed the above ground containers to overflow on multiple occasions causing raw sewage to pond on the ground, visible to the general public and easily accessible to the general public, animals, insects, etc.

76. In September of 2007, Printcraft caused or allowed the above ground containers to overflow causing raw sewage to flow directly into Sunnyside Park Utilities' man-hole which contains a water meter and water lines owned by Sunnyside Park Utilities.

77. Eastern Idaho Public Health District asked Printcraft

to move the tanks to an alternative location so that contamination of Sunnyside Park Utilities water system would not occur.

Printcraft moved the tanks for a short time, but has now moved the sewage tanks so that they currently sit directly above Sunnyside Park Utilities' property and restrict Sunnyside Park Utilities' ability to access its own property which is located entirely within an easement granted to Sunnyside Park Utilities.

78. The raw sewage ponding on the ground is injurious to health, is offensive to the senses, and obstructs Sunnyside Park Utilities' free use of Sunnyside Park Utilities' property, so as to interfere with Sunnyside Park Utilities' comfortable enjoyment of its property.

79. Thousands of gallons of raw sewage now sit directly above Sunnyside Park Utilities' water meter and water valve. The raw sewage is frequently allowed to leak, which constitutes a direct and severe health threat to Sunnyside Park Utilities' water system. If the water system is contaminated through Printcraft's continuing nuisance, will irreparably damage each and every customer served by Sunnyside Park Utilities.

80. Sunnyside Park Utilities is entitled to an order abating the nuisance.

81. Sunnyside Park Utilities is entitled to damages in an amount to be proven at trial.

PUNITIVE DAMAGES

82. Sunnyside Park Utilities re-alleges paragraphs 1-81 by reference.

83. Printcraft's actions were wanton, malicious and in

reckless disregarding of Sunnyside Park Utilities' rights and property.

84. Sunnyside Park Utilities has suffered damages to its rights and property.

85. Printcraft's wanton, malicious, and reckless actions continue.

86. Sunnyside Park Utilities is entitled to an award of punitive damages, in an amount to be determined by the jury, to deter Printcraft from continuing in its wanton, malicious, and reckless behavior.

PRAYER

WHEREFORE, Sunnyside Park Utilities, Inc. respectfully requests the following relief against Printcraft Press, Inc. and Travis Waters

1. That Printcraft recover nothing by reason of its Second Amended Complaint and that all such claims be dismissed.

2. That Sunnyside Park Utilities be awarded its damages for Printcraft's breach of contract in the amount of \$2,648.64, or such amount as may be proven at trial.

3. That Sunnyside Park Utilities be awarded general and special damages for Printcraft's breach of the covenant of good faith and fair dealing.

4. That Sunnyside Park Utilities be awarded treble the amount of damages proven at trial, or \$50.00, whichever is greater, for Printcraft's trespass onto Sunnyside Park Utilities' property.

5. That Sunnyside Park Utilities be awarded general and

special damages against Printcraft Press and Travis Waters for Travis Waters' fraudulent conduct.

6. That Sunnyside Park Utilities be awarded general and special damages against Printcraft Press and Travis Waters for Travis Waters' failure to disclose the substances and flows Printcraft would discharge into Sunnyside Park Utilities' septic system.

7. That the Court order Printcraft to abate the nuisance created by Printcraft's use and improper maintenance of the above ground tanks.

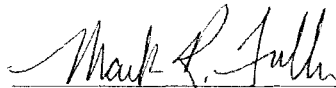
8. That Sunnyside Park Utilities be awarded its damages for the nuisance caused by Printcraft's use and improper maintenance of the above ground tanks.

8. That Sunnyside Park Utilities be awarded punitive damages, in an amount to be determined by the jury.

8. That Sunnyside Park Utilities be awarded all of its costs and attorney fees.

9. For such other relief, legal or equitable, to which Sunnyside Park Utilities has any right or entitlement.

DATED this 28th day of April, 2008.



Mark R. Fuller
Attorney for Defendant

DEMAND FOR JURY TRIAL

Sunnyside Park Utilities hereby demands a trial by a twelve
(12) person jury on all issues of fact.

DATED this 28th day of April, 2008.



Mark R. Fuller
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorneys listed below on this 28th day of April, 2008:

Document Served:

SUNNYSIDE PARK UTILITIES' ANSWER
TO SECOND AMENDED COMPLAINT,
COUNTERCLAIMS, PRAYER FOR
PUNITIVE DAMAGES, AND DEMAND
FOR JURY TRIAL

Attorneys Served:

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DISTRICT JUDICIAL COURT
BONNEVILLE

ATTORNEY FOR DEFENDANT SUNNYSIDE INDUSTRIAL AND PROFESSIONAL PARK, LLC, AND
SUNNYSIDE PARK UTILITIES, INC.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE**

PRINCRAFT PRESS, INC., an)	Case No. CV-06-7097
Idaho corporation,)	
)	
Plaintiff,)	SPU'S AND SIPP'S
v.)	OPPOSITION TO MOTION TO AMEND
)	TO ALLEGE PUNITIVE DAMAGES
SUNNYSIDE PARK UTILITIES,)	DAMAGES
INC., an Idaho corporation,)	
SUNNYSIDE PARK OWNERS)	
ASSOCIATION, INC., an Idaho)	
corporation,)	
SUNNYSIDE)	
INDUSTRIAL AND PROFESSIONAL)	
PARK, LLC, an Idaho limited)	
liability corporation, DOYLE)	
BECK, an individual, and KIRK)	
WOOLF, an individual.)	
)	
Defendants.)	
)	
_____)	
SUNNYSIDE PARK UTILITIES,)	
INC., an Idaho corporation.)	
)	
Counterclaimant,)	
v.)	
)	
PRINCRAFT PRESS, INC., an)	
Idaho corporation, and TRAVIS)	
WATERS, an individual.)	
)	
Counter-defendants.)	
_____)	

SPU'S AND SIPP'S OPPOSITION TO
MOTION TO AMEND TO ALLEGE PUNITIVE DAMAGES - 1

COMES NOW Defendants, Sunnyside Park Utilities, Inc., an Idaho corporation, (hereafter individually "SPU") and Sunnyside Industrial and Professional Park, LLC., an Idaho limited liability company (hereafter individually "SIPP"), (both SIPP and SPU hereafter collectively "Sunnyside"), and file this Opposition to Plaintiff's Motion to Amend to Allege Punitive Damages.

LEGAL STANDARD

Idaho Code §6-1604(1) provides that to recover punitive damages, "...the claimant must prove, by clear and convincing evidence, oppressive, fraudulent, malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted." However, a trial court is required to hold a pretrial hearing and decide whether or not the claimant will be allowed to amend to assert punitive damages pursuant to Idaho Code §6-1604(2). The Court should allow the amendment, "...if, after weighing the evidence presented, the court concludes that, the moving party has established at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages." Idaho Code §6-1604(2).

Printcraft argues that "[s]ince Printcraft's fraud claims are still alive, Printcraft should be allowed to allege a claim for punitive damages." See Plaintiff's Memorandum, pg. 9.¹ Idaho Code §6-1604(2) does not provide for application of a Motion for Summary Judgment standard, (construing all contested facts in favor of the moving party and drawing all reasonable inferences in

¹ Printcraft cites to *Walston v. Monumental Life Ins. Co.*, 129 Idaho 211, 923 P.2d 456 (1996), to support its argument, however, that case does not hold that amendments should be allowed if the moving party "survived" summary

the moving party's favor), instead, the statute requires the Court to actually "**weigh the evidence** presented." *Id.* (Emphasis Added). "In ruling on a motion for summary judgment, the district court **is not permitted to weigh the evidence** or to resolve controverted factual issues." See Memorandum Decision and Order, pg. 2-3 (citing *Bybee v. Clark*, 118 Idaho 254, 257, 796 P.2d 131, 134 (1990)) (Emphasis Added). If the legislature intended punitive damages amendments to be allowed any time the moving party "survived" summary judgment, it would have stated that standard in Idaho Code §6-1604(2). Instead, to allow an amendment for punitive damages, the legislature requires the Court to weigh the evidence and find a "reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages" before allowing such an amendment. Printcraft's argument would render §6-1604(2) meaningless because punitive damages would be allowed to go to the jury every time there was a trial on contested issues of fact, after denial of a Motion for Summary Judgment.

In deciding whether Printcraft has established a "reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages," the Court must necessarily decide whether Printcraft is reasonably likely to prevail on its causes of action for constructive fraud. Printcraft asserts that, "if Printcraft can prove fraud, then it should also be able to allege punitive damages." It also logically follows that if Printcraft is not reasonably likely to prove constructive fraud, it **should not**

judgment.

be allowed to allege punitive damages.²

STATEMENT OF FACTS

1. The Development Agreement was recorded on the records of Bonneville County on August 4, 1999. *Id.*
2. On December 23, 1999, SIPP transferred the property now known as Block 1, Lot 5 of the Sunnyside Industrial and Professional Park by warranty deed to Miskin Scraper Works, Inc. See Plaintiff's Second Amended Complaint, Exhibit H.
3. On March 29, 2002, Kirk Woolf incorporated SPU. See Affidavit of Travis Waters, dated August 2, 2007, Exhibit E.
4. On or about April 16, 2002, SPU entered into an agreement titled "Third Party Beneficiary Utility Agreement" with the Defendant Sunnyside Park Owners Association, Inc. (hereafter "SPOA") for SPU to provide water and sewer services to Defendant SPOA and its members. See Plaintiff's Second Amended Complaint, Ex. G.
5. Miskin Scraper Works was not in 2002 and **has never been** a member of SPOA. See Affidavit of Kirk Woolf, dated May 1, 2008, para. 4. (Emphasis Added).
6. Mr. Waters testified that "[i]n the early part of 2005, I began thinking about a new building for Printcraft Press. Printcraft had outgrown its facility on South Yellowstone in Idaho Falls and I was looking to build a bigger facility for the company." See Affidavit of Travis Waters, dated December 5, 2007, para. 3.

² If the Court grants Summary Judgment to Sunnyside on Printcraft's Constructive Fraud causes of action, based upon the new evidence submitted in Response to Printcraft's Motions for Reconsideration, this Motion is moot.

7. Printcraft asserts that it made the decision to occupy a building in the Sunnyside Industrial and Professional Park subdivision based upon "...the sign, the plat map and the CC&Rs..." See Affidavit of Travis Waters, dated August 2, 2007, para. 19.
8. The sign and the plat map allegedly informed Waters that the name of the subdivision was "Sunnyside Industrial and Professional Park." See Travis Waters Affidavit, dated August 2, 2007, para. 16-17.
9. The advertisement sign located near the entrance to the subdivision, was placed by KW Contractors, Inc. to advertise KW Contractor's building construction services in the subdivision.
10. Prior to purchasing a lot from Miskin Scraper Works, Waters did discuss a potential purchase of Block 4, Lot 5 and Block 1, Lot 10 with KW Contractors, Inc. See Deposition of Travis Waters, pg. 81, ln. 15-25.
11. However, neither Travis Waters, Printcraft or any entity related to Travis Waters ever purchased a lot in the subdivision from KW Contractors, Inc. See Affidavit of Kirk Woolf, dated May 1, 2008, para. 6.
12. Neither Travis Waters, Printcraft or any other entity related to Travis Waters ever purchased a lot in the subdivision from Sunnyside. *Id.*
13. The Covenants, Conditions, and Restrictions, (hereafter "CCRs") referenced by Travis Waters do not even benefit Lot 5, Block 1 of the Sunnyside Industrial and Professional Park

subdivision. See Affidavit of Travis Waters, para. 18, and Ex. H. (Note: The CCRs encumber and benefit only "Lots 6-10, Block 1; Lots 4-5, Block 2; Lots 1-7, Block 3; and Lots 1-8, Block 4" and do not affect Lot 5, Block 1 (the property now occupied by Printcraft), because Lots 3, 4, and 5 of Block 1 were sold to Miskin Scraper Works, prior to the signing and recordation of any of the CCRs for the subdivision. See Second Amended Covenants, Conditions, and Restrictions, attached to the Affidavit of Travis Waters, Ex. H and Warranty Deed from SIPP to Miskin, attached to Plaintiff's Second Amended Complaint, Ex. H.)

14. Prior to construction of the building on Lot 5, Block 1, Printcraft entered into an agreement with the owner [either Waters Land and Cattle or CTR Development] to occupy the property after construction was completed. See Deposition of Travis Waters, pg. 87, ln. 21-pg. 88, ln. 5. See also Building Plans, attached as Exhibit 7 to the Deposition of Travis Waters.
15. Travis Waters testified that the plans were drafted, showing Printcraft as a tenant, in early 2005. See Deposition of Travis Waters, pg. 89, ln. 4-7.
16. In September, 2005, months after Printcraft had already contracted to occupy the property, and prepared blueprints showing "Printcraft Press" as an occupant in the property, Waters met with Sunnyside and provided a copy of the blueprints of the building that CTR Development was constructing for Printcraft to occupy. See Affidavit of

Travis Waters, para. 20.³

17. During the September, 2005 meeting Waters told Sunnyside that Printcraft was going to occupy the building after construction was completed. See Affidavit of Travis Waters, para. 21.
18. Waters testified that he told Sunnyside **"nothing"** regarding what Printcraft intended to discharge into the sewer system. See Deposition of Travis Waters, pg. 119, ln. 10-17. (Emphasis Added).
19. Waters testified that Sunnyside did not promise any type of sewer services to Printcraft before Printcraft began occupancy. See Deposition of Travis Waters, pg. 109, ln. 25 through pg. 110, ln. 2.
20. Waters acknowledged that Printcraft conducted no investigation regarding the services provided by SPU prior to Printcraft's occupancy of the building. See Waters Deposition, pg. 109, ln. 20-24.
21. Printcraft's brief asserts that "Beck and Woolf knew and understood the nature of Printcraft's business" and cites to paragraph 22 of Waters' August 2, 2007 affidavit. See Plaintiff's memorandum, pg. 5, para. 20. However, paragraph 22 of Water's affidavit was stricken from the record by the Court's August 27, 2007 order, which held "...all statements not based upon personal knowledge in the Affidavits of Lane Erickson and Travis Waters are stricken from the record.

³ Printcraft's brief asserts that the meeting occurred in "early 2005," however, Mr. Waters affidavit clearly states that the meeting occurred in "early September 2005." See Plaintiff's Memorandum, pg. 5.

Statements which are expressly based on the affiants' personal knowledge and the documents attached to the Affidavits are not stricken..." See August 27, 2007 Order, para. 4. Mr. Waters has no way of knowing what Beck and Woolf understood.

22. On or about September 12, 2005, CTR Development, LLC owned Block 1, Lot 5 of the subdivision and paid a sewer connection fee in the amount of \$1,800.00 and SPU allowed CTR Development to connect Block 1, Lot 5 to SPU's sewer lines. See Second Amended Complaint para. 24(C) and 26.
23. Waters testified that Printcraft had no involvement in the process of connection of the building to Sunnyside's sewer service. See Waters Deposition, pg. 105, ln. 10-13.
24. On or about January 23, 2006, CTR Development transferred Block 1, Lot 5 to J&LB Properties. See Plaintiff's Second Amended Complaint, para. 24(D). J&LB Properties is the current owner of Block 1, Lot 5.
25. On or about January 23, 2006, J&LB Properties entered into a written lease agreement with CTR Management, LLC for use of the building located on Block 1, Lot 5. *Id.* Para. 26.
26. On or after January 23, 2006, Printcraft entered into an oral month-to-month sub-lease agreement with CTR Management, wherein Printcraft agreed to sub-lease a portion of the building on Block 1, Lot 5 from CTR Management. *Id.* para. 27.
27. Printcraft occupied the building pursuant to the month-to-month sublease agreement beginning in January of 2006. See

Second Amended Complaint, para. 27. *See also* Deposition of Travis Waters, pg. 103, ln. 1-3.

28. Printcraft was provided with sewer services without any limitation until September of 2006, when the parties entered into an agreement whereby Printcraft would cease discharging all substances Sunnyside classified as "processed waste" into the septic system. *See* Second Amended Complaint, para. 42-45. (para 42: "In this September 6, 2006 letter, the Defendants **for the first time** attempt to put the Plaintiff on notice that their intention was only to accept human waste and not handle any other types of discharges into the sewer system." (Emphasis Added)).

29. On December 15, 2006 SPU severed the sewer connection to Block 1, Lot 5 of the subdivision. *See* Second Amended Complaint, para. 54.

30. Bonneville County Planning and Zoning did not issue a "Certificate of Occupancy" allowing Printcraft, as a renter, to legally occupy the building until February 1, 2007. *See* Certificate of Occupancy, dated February 1, 2007, attached as Exhibit "C" to the Affidavit of Kirk Woolf, dated November 21, 2007. *See also* Temporary Certificate of Occupancy, dated March 16, 2006, attached as Exhibit "A" to the Affidavit of Kirk Woolf, dated February 1, 2007.

ARGUMENT

I. PRINTCRAFT DOES NOT HAVE A REASONABLE LIKELIHOOD OF PREVAILING ON ITS CAUSES OF ACTION FOR CONSTRUCTIVE FRAUD

The Idaho Court of Appeals stated: "...punitive damages are

unavailable unless the plaintiff can show the invasion of a legally protected right...the plaintiff must first be entitled to legal or equitable relief before punitive damages can be obtained." *Payne v. Wallace*, 136 Idaho 303, 308, 32 P.3d 695 (Ida.App. 2001). The Court should only allow the amendment to allege punitive damages, if it concludes that Printcraft is reasonably likely to prove the facts necessary to support Printcraft's constructive fraud causes of action.

The elements of actionable fraud or misrepresentation are as follows:

(1) a representation; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person and in the manner reasonably contemplated; (6) the hearer's ignorance of its falsity; (7) his reliance on the truth; (8) his right to rely thereon; and (9) his consequent and proximate injury.

Faw v. Greenwood, 101 Idaho 387, 389, 613 P.2d 1338 (1980). "Fraud may be established by silence where the defendant had a duty to speak." *G&M Farms v. Funk Irr. Co.*, 119 Idaho 514, 521 808 P.2d 851 (1991). However, "[t]he absence of any one of the elements is fatal to recovery." *Jenkins v. Boise Cascade Corp.*, 141 Idaho 233, 239, 108 P.3d 380 (2005).

a. Duty to Disclose

This Court previously addressed the "duty to disclose." See Memorandum Decision and Order, entered August 31, 2007.⁴ The Court found that under *Sowards v. Rathbun*, there may be a duty to disclose:

⁴ Printcraft has filed a Motion for Reconsideration of Part of the Court's August 31, 2007 Order, however, Printcraft's pending Motion for Reconsideration does not address the Constructive Fraud portion of the

(1) if there is a fiduciary or other similar relation of trust and confidence between the two parties; (2) in order to prevent a partial statement of facts from being misleading; or (3) if a fact known by one party and not the other is so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it. *Bethlahmy, supra*.

134 Idaho 702, 707, 8 P.3d 1245, 1250 (2000).

The Court then found that Printcraft had not established any evidence to satisfy the first two prongs of *Sowards*. See Memorandum Decision and Order, pg. 14. The Court found that there was an issue of material fact regarding the third prong. *Id*. The third prong requires proof of two elements: (a) a contract between two parties; and (b) a fact known by one of the parties and not by other which would make the contract voidable.

A. Contract between the parties

This court previously found that a contract was entered into between the parties in approximately September of 2006. See Memorandum Decision and Order, dated April 23, 2008. See also Memorandum Decision and Order, dated August 31, 2007, pg. 5-6.

None of the contracts which have been alleged prior to September, 2006 included both Sunnyside and Printcraft as the two contracting parties. A contract was entered into between SIPP and Miskin Scraper Works. See Second Amended Complaint, para. 24(A). A contract was entered into between Miskin Scraper Works and Waters Land and Cattle. *Id*. para. 24(B) A contract was entered into between Waters Land and Cattle and CTR Development. *Id*. para. 24(C). A contract was entered into between Printcraft and either Waters Land and Cattle or CTR Development. See Deposition of

decision.

Travis Waters, pg. 87, ln. 21 through pg. 88, ln. 5. A contract was entered into by SPU and SPOA, to which Printcraft was a beneficiary, but not a contracting party. See Second Amended Complaint, para. 18. A contract was entered into between CTR Development and Sunnyside, to which Printcraft was arguably a beneficiary, but clearly not a contracting party. See Second Amended Complaint, para. 26. Printcraft entered into an oral month-to-month contract with CTR Management. *Id.* para. 27. The only contract involving the parties in this litigation was the September, 2006 agreement entered into between Printcraft and Sunnyside. See Second Amended Complaint, para. 45.

B. Printcraft had knowledge in September of 2006

The Court's decision focused on two specific disputed material facts: (1) "...Waters testified that [sic] Woolf and/or Beck understood the nature of the business and its need for a septic connection...;" and (2) "Waters further testified that he did not know the limitations of the septic system." See Memorandum Decision and Order, dated August 31, 2007, pg. 14-15.

It is clear that by the time the parties entered into the September 2006 agreement, Waters did know the limitations of the septic system. As Sunnyside indicated in its Response to Motion for Reconsideration, additional information was disclosed by Printcraft after the Court made its decision on August 31, 2007. On October 26, 2007, Printcraft admitted that: "In June of 2006 Doyle Beck told Travis Waters what kind of system was being operated by the defendants." See Plaintiff's Responses to Defendant's First and Second Sets of Interrogatories, Requests for

Production and Requests for Admission, No. 59, Attached the Affidavit of Mark R. Fuller, Exhibit B. In addition, Printcraft admitted that: "In June of 2006 Doyle Beck told Travis Waters the capacity of the sewer system." *Id.* No. 60. Printcraft had received a copy of the Third Party Beneficiary Agreement and Sunnyside Utilities' Rules and Regulations for sewer service. See Second Amended Complaint, para. 44. Printcraft's attorney acknowledged that Printcraft was aware of the ongoing negotiations with DEQ. See Letter of Lane Erickson, dated September 26, 2006, attached as Exhibit U to the Second Amended Complaint. Travis Waters also acknowledged that he knew District Seven had concerns in July or August of 2006. See Deposition of Travis Waters, pg. 204, ln. 14 through pg. 205, ln. 2. Based on these facts, Printcraft does not have a reasonable likelihood of proving that it did not know the limitations, the type of system, the existence of the Rules and Regulations, or that there were issues with D7HD and DEQ, when it entered into the agreement in September of 2006.

Even if the Court looks at the state of the facts prior to Printcraft's occupancy of the building, the evidence, when weighed, clearly suggests that Sunnyside did not know the true nature of Printcraft's business or the types of substances Printcraft intended to discharge. The pending Motion to Amend does not require the Court to construe the facts liberally in favor of Printcraft, it requires the Court to weigh the evidence and determine if Printcraft has a reasonably likelihood of proving that Sunnyside "knew the nature of Printcraft's business and the types of substances it would discharge into the system." See

Sowards v. Rathbun, 134 Idaho 702, 707, 8 P.3d 1245 (2000); See also Idaho Code §6-1604(2)

The only evidence Printcraft has presented showing that Sunnyside knew the nature of Printcraft's business and the types of substances it would discharge into the system, is that Travis Waters disclosed the name "Printcraft Press" to Sunnyside. See Affidavit of Travis Waters, para. 21, and Exhibit K to the Second Amended Complaint.

There is significantly more evidence that establishes that Sunnyside did **not** know the nature of Printcraft's business, and especially that Sunnyside did not know the types of substances Printcraft would discharge into the system. Even according to Travis Waters, Printcraft did not tell Sunnyside what was to be discharged into Sunnyside's system. Travis Waters' deposition testimony establishes that fact:

Q. [Mark Fuller] Did Printcraft inform Sunnyside about the types and quantities of waste Printcraft intended to discharge into Sunnyside's septic system?

A. [Travis Waters] No.

Q. What was Sunnyside told by Printcraft, if anything, would be discharged?

A. Nothing.

Travis Waters deposition, pg. 119, ln. 10-17. In addition Travis Waters testified as follows:

Q. [Fuller] Did Printcraft ever identify to Sunnyside any of the chemicals that were being discharged into Sunnyside's sewer service prior to disconnection?

A. [Waters] In Printcraft's history, I don't remember ever telling the City of Idaho Falls, our own septic system, or anything, or Sunnyside what was going down the drain.

Id. Pg. 165, ln. 21 through pg. 166, ln. 3. The blueprints that Travis Waters provided to Sunnyside also do not disclose any

information about the nature of Printcraft's business or the types of substances Printcraft planned to discharge. See Blueprints, attached as Exhibit K to Printcraft's Second Amended Complaint. A close examination of the blueprints shows three small sinks and two toilets. *Id.* There is no disclosure on the plans of the reverse osmosis system, the water softener system, the L-Shaped sink in which Printcraft discharged hundreds of colors of inks (see Waters Deposition, pg. 74, ln. 25 through pg. 76, ln. 12; Ex. 3, pg. 2 pics A, B, C and D), or any of the machines which discharged chemicals into the septic system.

Doyle Beck's testimony confirms that Sunnyside did not know what Printcraft was putting into the septic system as a result of misrepresentations by Travis Waters. See Deposition of Doyle Beck, pg. 105, ln. 6 through pg. 107, ln. 22. Doyle Beck testified as follows:

Q. [Lane Erickson] Did you inquire about the processes that he used in his building?

A. [Doyle Beck] I didn't know that he had any processes.

Id. Pg. 107, ln. 15-18. Notably, Travis Waters continues to characterize Printcraft's sewage as limited to "domestic" even after Sunnyside disconnected Printcraft from Sunnyside's septic system. See City of Idaho Falls, Septage Hauler Chain of Custody, dated September 4, 2007, attached as Exhibit C to the Affidavit of Mark R. Fuller, dated May 1, 2008. This is likely because the City of Idaho Falls "Industrial Wastewater Acceptance" agreement states that: "Domestic sewage is the only septage which will be accepted." See City of Idaho Falls, Industrial Pretreatment Program, attached as Exhibit D to the Affidavit of Mark R. Fuller,

dated May 1, 2008. Even the City of Idaho Falls "Industrial Pretreatment Program" doesn't accept Printcraft's industrial wastes. *Id.* The Idaho Deputy Attorney General for DEQ also confirms that Printcraft cannot discharge its industrial wastes into a subsurface disposal system. See Letter of Courtney Beebee, dated April 11, 2008, attached to the Affidavit of Mark R. Fuller, Exhibit E.

In order to find in Printcraft's favor, the Court must find that in order to obtain \$15.00 a month (See Deposition of Doyle Beck, pg. 338-339), Sunnyside was knowingly prepared to incur criminal penalties including a misdemeanor charge and fines of \$10,000 per occurrence or \$1,000 per day for continuing occurrences from violations of IDAPA 58.01.03.004.03 and that Sunnyside was willing to allow its sewer system to overflow and fail by Printcraft's discharge of thousands of gallons of reverse osmosis water, water softener brine, hazardous chemicals, and other substances that were harmful to Sunnyside's septic system. Such a finding is clearly not reasonable.

While Printcraft put forth a small amount of evidence, which the Court previously found sufficient for Printcraft to "survive" summary judgment, that evidence alone, is not nearly sufficient to establish that Printcraft has a reasonable likelihood of proving a duty to disclose by Sunnyside at trial. The evidence regarding a duty to disclose, when weighed without the benefit of a liberal construction and all reasonable inferences drawn in Printcraft's favor, clearly establishes the tenuous nature of Printcraft's causes of action for constructive fraud. Printcraft's motion to

amend should be denied because Printcraft is not reasonably likely to prove a duty to disclose.

b. Lack of Reliance and Materiality

Printcraft must establish that it relied upon the alleged non-disclosures of Sunnyside and that the non-disclosures were material to Printcraft's decision to occupy the building. *Faw v. Greenwood*, 101 Idaho 387, 389, 613 P.2d 1338 (1980). While there is an issue of material fact regarding whether or not Printcraft relied on the alleged non-disclosures (see Order, dated December 26, 2007), Printcraft has not established a reasonable likelihood of proving reliance or materiality at trial.

The evidence clearly indicates that Printcraft made its decision to cease doing business at its previous location and move into the building located at Block 1, Lot 5 of the subdivision independent of, and prior to, any interaction between Sunnyside and Printcraft regarding sewer services.

Printcraft asserts that "Printcraft relied upon the description of the subdivision, the plat map, and the CCRs in deciding that the SIPP subdivision would be an ideal location for Printcraft's business." See Plaintiff's Memorandum, pg. 5. However, the information that Printcraft allegedly got from the sign and the plat map was simply the name of the subdivision. See Affidavit of Travis Waters, para. 16-17. The sign was KH Woolf Development's sign for KW Contractors, Inc. services to construct buildings in the subdivision. See Affidavit of Kirk Woolf, dated May 1, 2008, para. 5. Waters acknowledged that his only contact with any of the defendants prior to his purchase of property from

Miskin Scraper Works was directly with Mr. Woolf. See Deposition of Travis Waters, pg. 81, ln. 8-22. Mr. Waters also testified that he discussed Block 4, Lot 5 and Block 1, Lot 10 with Mr. Woolf. See Deposition of Travis Waters, pg. 81, ln. 15-25. However, Water did not purchase any of the lots he discussed with Mr. Woolf. See Affidavit of Kirk Woolf, dated May 1, 2008, para. 6. The CCRs referenced by Printcraft do not even cover the lot Waters purchased from Miskin. See Second Amended Covenants, Conditions, and Restrictions, attached as Exhibit H to the August 2, 2007 Affidavit of Travis Waters.

Waters testified in his deposition that it was Miskin Scraper Works, not Sunnyside, that represented that Lot 5, Block 1 came with water, sewer and county taxes. See Deposition of Travis Waters, pg. 79, ln. 3-21. Mr. Waters also testified as follows:

Q. [Mark Fuller] Did Mark Miskin represent to you that the property he was selling you had sewer service in place?

A. [Travis Waters] Yes.

...

Q. Prior to your purchase of the property were any representations regarding sewer service made to you by any representative of Sunnyside Park Utilities?

A. Can you read that?

(The record was read.)

THE WITNESS: Prior to me purchasing, no.

See Deposition of Travis Waters, pg. 80, ln. 21 through pg. 81, ln. 14. If Miskin Scraper Works had additional information that Printcraft did not have, when that contract was entered into, Miskin Scraper Works might have a duty to disclose. However, Sunnyside cannot be held liable for any alleged non-disclosures by of Miskin Scraper Works.

In addition, Waters acknowledged that Sunnyside did not

promise any type of sewer services to Printcraft before Printcraft began occupancy of the building. See Deposition of Travis Waters, pg. 109, ln. 25 through pg. 110, ln. 2. Waters also testified that Printcraft did no investigation regarding the services provided by Sunnyside prior to Printcraft's occupancy of the building. *Id.* Pg. 109, ln. 20-24.

Prior to construction of the building on Lot 5, Block 1, Printcraft entered into an agreement with the owner to occupy the property after construction was completed. See Deposition of Travis Waters, pg. 87, ln. 21 through pg. 88, ln. 5. This agreement necessarily would have been entered into prior to early 2005, when the plans showing "Printcraft Press" as a tenant, were created. See Building Plans, attached as Exhibit 7 to the Deposition of Travis Waters. See also Waters Deposition, pg. 89, ln. 4-7.

Because Sunnyside did not make any representations regarding the sewer services to Printcraft, or any promises regarding sewer services to Printcraft before Printcraft entered into an agreement to occupy the building, Printcraft could not have relied upon any non-disclosures from Sunnyside in making the decision to close down its business on South Yellowstone, in early 2005, and move to Block 1, Lot 5 of the subdivision. This is especially true where Travis Waters testified that Miskin Scraper Works, who is not a party to this lawsuit, was the entity which Printcraft claims represented that Block 1, Lot 5 already had sewer services.

Because Printcraft does not have a reasonable likelihood of proving reliance or materiality at trial, the Court should deny

Printcraft's motion to amend.

c. Justifiable Reliance

Even if the Court concludes that there is a reasonable likelihood that Printcraft can establish a duty to disclose by Sunnyside, reliance by Printcraft, and materiality, Printcraft should not be allowed to amend its Complaint because the alleged reliance was not justifiable. Consideration of justifiable reliance is relevant in deciding whether or not Printcraft is reasonably likely to prevail on its fraud cause of action, because "...occupation of the property without an occupancy permit is simply evidence which may have an affect on whether reliance was justified..." See Order, dated December 26, 2007.

Sunnyside has established that no Certificate of Occupancy had been issued for the building when Printcraft occupied the building. See Affidavit of Kirk Woolf, dated November 21, 2007. Black's law dictionary defines "Justifiable" as: "Rightful; defensible; warranted or sanctioned by law; that which can be shown to be sustained by law; as justifiable homicide." See Black's Law Dictionary, Revised Fourth Edition (1968).

There is no dispute that Printcraft moved its operations into and began using the subject property in January of 2006. See Deposition of Travis Waters, pg. 57, ln. 24-25. There is also no dispute that when Printcraft began using the property, no certificate of occupancy had been obtained allowing Printcraft to lawfully occupy and use the building. See Printcraft's Responses to Requests for Admissions No. 12 and 14, previously filed. Under the International Building Code, Printcraft's occupancy and use of

the building was unlawful. See International Building Code 2003, Section 110.1 and 113.1, attached as Exhibit D to the Affidavit of Kirk Woolf, dated November 21, 2007. Printcraft's occupancy of the building was not sanctioned by law and was not therefore justifiable.

The Court should deny Printcraft's Motion to Amend because Printcraft is not reasonably likely to prove that its occupancy of the building was justifiable, when such occupancy was specifically prohibited by law.

d. Damages

Printcraft has not suffered any damages which were proximately caused by any alleged non-disclosures by Sunnyside. In order to establish fraud, Printcraft must prove that the non-disclosure proximately caused Printcraft's alleged injuries. *Edmark Motors, Inc. v. Twin Cities Toyota*, 111 Idaho 846, 848, 727 P.2d 1274 (Ida.App.1986). "[P]roximate cause refers to the causal link between the plaintiff's act of reliance and his subsequent injury." *Id.*

Printcraft's Memorandum does not set forth any evidence regarding damages it allegedly suffered. Most of Printcraft's damage evidence, obtained by Sunnyside through discovery, relates to costs of hauling sewer to the City of Idaho Falls, alleged lost profits after Sunnyside disconnected the sewer services, and costs to obtain alternative sewer services as a result of the December, 2006 disconnection of the sewer services. See Excerpts of Report of David Smith, attached to the Affidavit of Mark R. Fuller, dated May 1, 2008, Exhibit F. Printcraft's own breach of the contract

entered into with Sunnyside in September of 2006, breaks the chain of causation for any damages caused by the December, 2006 disconnection of the sewer service. This Court found that there was at least an implied-in-fact contract which was breached by Printcraft's illegal discharges. See Memorandum Decision and Order, entered April 23, 2008. If Printcraft had not breached that agreement, none of Printcraft's alleged damages arising from the sewer disconnection would have ever occurred, as Printcraft would still be receiving sewer services under that agreement.

Printcraft's only other alleged damages are costs Printcraft incurred to move into the building and to cease operating at its previous location. See Affidavit of Travis Waters, dated December 5, 2007, para. 16. However, Mr. Waters' affidavit fails to set forth any specific evidence of the alleged damages. Based only on Mr. Waters' affidavit, there is not sufficient evidence for the Court to conclude that Printcraft is reasonably likely to prevail at trial.

Printcraft simply does not have a reasonable likelihood of proving any damages which were proximately caused or recoverable as a result of the alleged non-disclosures by Sunnyside.

II. PRINTCRAFT HAS PRESENTED NO EVIDENCE OF A BUSINESS SCHEME FOR PROFIT

Printcraft states in its brief that "[e]xemplary damage awards are appropriate when the defendant is engaged in deceptive business practices **operated for a profit** posing a danger to the general public." See Plaintiff's Memorandum, pg. 8. (Emphasis Added). Printcraft also claims that the facts in *Umphrey v.*

Sprinkel, 106 Idaho 700, 710, 682 P.2d 1247 (1983), where the Court found the defendants were operating a "deceptive business practice" which was operated for a profit, are similar to the facts in this case. See Plaintiff's Memorandum, pg. 9. However, the cases referenced by Printcraft are easily distinguishable because in this case there is no dispute that Sunnyside was not operating the septic system to generate a profit.

SPU only received approximately \$15.00 a month from Printcraft, for Printcraft's use of the septic system during the time Printcraft was connected to the septic system. See Deposition of Doyle Beck, pg. 338, ln. 24 through pg. 339, ln. 3. Furthermore, while Printcraft claims "the SIPP lots were advertised as possessing adequate sewer and water for industrial and commercial purposes," Printcraft does not establish or allege that Sunnyside was responsible for such advertisements. Instead KW Contractors, Inc., advertised its own building construction services with the sign, however, neither Printcraft Press, nor any Travis Waters related entities purchased anything from KH Woolf Development. See Affidavit of Kirk Woolf, dated May 1, 2008, para. 6. Printcraft did assert that Miskin Scraper Works advertised Block 1, Lot 5 as having sewer and water, but Printcraft has not asserted or proved that Miskin Scraper Works is in any way related to Sunnyside. See Deposition of Travis Waters, pg. 79, ln. 3-11. Instead, Waters acknowledged that Sunnyside never represented anything to him prior to his purchase of Block 1, Lot 5, and that Sunnyside never promised to provide Printcraft with any type of sewer services prior to Printcraft's occupancy of the building.

See Deposition of Travis Waters, pg. 81, ln. 8-14. These facts clearly distinguish the current litigation from the facts in *Umphrey*, and establish that Printcraft is not entitled to punitive damages because there was no "deceptive business scheme operated for a profit" by Sunnyside.

III. VIOLATIONS OF IDAPA ALLEGED BY PRINTCRAFT

Printcraft included various alleged statements from Kellye Eager, of the Eastern Idaho Public Health district in its statement of facts, however, Printcraft does not address how those statements are relevant to its Motion to Amend to Allege Punitive damages. See Plaintiff's Memorandum, pg. 7-8.

According to Printcraft, Mrs. Eager's testimony was that the septic system has a capacity problem because there are eleven buildings connected to the system. See Plaintiff's Memorandum, pg. 7, para. 35 and 36. However, Mrs. Eager also testified that she doesn't actually know what any of the resulting flows from any of the buildings connected to SPU's septic system are. See Deposition of Kellye Eager, taken April 23, 2008 (transcript in preparation).

Mrs. Eager also testified that, in her opinion, the septic system violated several IDAPA provisions including its location in a pit, that it could be flooded in the event of a major snow melt, the connection of the third building, etc. See Plaintiff's Memorandum, pg. 7-8. However, when asked to identify which specific IDAPA provisions she was referring to, Mrs. Eager was unable identify even one violation of a specific regulation. See Deposition of Kellye Eager, taken April 23, 2008 (transcript in preparation). Likewise, Printcraft has failed to identify any

specific provision of IDAPA which Sunnyside violated. See Plaintiff's Memorandum.

Printcraft has not established any violation of IDAPA provisions by Sunnyside. The only IDAPA violations occurred when Printcraft discharged its water softener brine, hazardous wastes, inks, chemicals, and excessive flows of water into the septic system. See Memorandum Decision and Order, dated August 31, 2007, pg. 5. Therefore, the Court should deny Printcraft's motion to amend to include a prayer for punitive damages.

CONCLUSION

Printcraft is not entitled to amend its Complaint to include a prayer for punitive damages because Printcraft does not have a reasonable likelihood of proving its constructive fraud causes of action at trial. Printcraft has not set forth sufficient evidence to establish that Sunnyside had a duty to disclose any information to Printcraft. Printcraft has not set forth sufficient evidence to establish that it actually relied on any alleged non-disclosures from Sunnyside. Printcraft has not set forth sufficient evidence to establish that any alleged reliance was justified, because of Printcraft's lack of a Certificate of Occupancy. In addition, Printcraft has not set forth sufficient evidence to establish that any recoverable damages were suffered.

Unlike the cases cited by Printcraft, there is no evidence that Sunnyside was involved in a "deceptive business scheme" operated by Sunnyside in order to reap profits from the unknowing public. Finally, other than violations caused by Printcraft's own misfeasance, Printcraft has not established evidence of any

violations of IDAPA.

Sunnyside respectfully requests that the Court deny
Printcraft's Motion to Amend to Allege Punitive Damages.

DATED this 1 day of May, 2008.



Mark R. Fuller
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorneys listed below on this 1 day of May, 2008:

Document Served:

SPU'S AND SIPP'S OPPOSITION
TO MOTION TO AMEND TO ALLEGE
PUNITIVE DAMAGES

Attorneys Served:

Michael D. Gaffney, Esq.
BEARD ST. CLAIR
2105 Coronado Street
Idaho Falls, ID 83404

<u> </u>	U.S. Mail
<u> </u>	Facsimile
<u> J </u>	Hand Delivery



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DISTRICT 7TH JUDICIAL COURT
BONNEVILLE COUNTY IDAHO

8 MAY -1 P4:08

ATTORNEY FOR DEFENDANT SUNNYSIDE PARK UTILITIES, INC.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE**

PRINCRAFT PRESS, INC., an Idaho)	Case No. CV-06-7097
corporation,)	
)	
Plaintiff,)	AFFIDAVIT OF KIRK WOOLF IN
)	OPPOSITION TO PLAINTIFF'S
v.)	MOTION TO AMEND TO ALLEGE
)	PUNITIVE DAMAGES
)	
SUNNYSIDE UTILITIES, INC., an Idaho)	
corporation, SUNNYSIDE PARK)	
OWNERS ASSOCIATION, INC., an)	
Idaho corporation, and SUNNYSIDE)	
INDUSTRIAL AND PROFESSIONAL)	
PARK, LLC, an Idaho limited liability)	
corporation,)	
)	
Defendants.)	

STATE OF IDAHO)
) ss.
County of Bonneville)

Kirk Woolf, being first duly sworn upon his oath states and alleges as follows:

1. Affiant is a resident of Bingham County, State of Idaho and executes this Affidavit upon his personal knowledge.
2. Affiant is an officer of Sunnyside Park Utilities,

AFFIDAVIT OF KIRK WOOLF IN OPPOSITION TO PLAINTIFF'S MOTION
TO AMEND TO ALLEGE PUNITIVE DAMAGES - 1

Inc., Sunnyside Industrial and Professional Park, LLC, and Sunnyside Park Owners Association, LLC.

3. Affiant is an officer of KW Contractors, Inc.

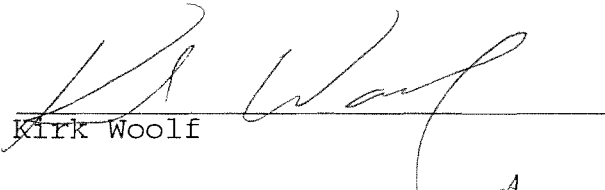
4. Miskin Scraper Works, Inc. was not in 2002, and never has been, a member of Sunnyside Park Owners Association, LLC.

5. The advertisement sign located near the entrance to the subdivision, was placed by KW Contractors, Inc. to advertise KW Contractor's building construction services in the subdivision.

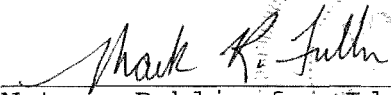
6. Neither Travis Waters, Printcraft Press, or any other entity owned or operated by Travis Waters ever purchased a lot in the subdivision from KW Contractors, Inc., Sunnyside Industrial and Professional Park, LLC, Sunnyside Park Owners Association, Inc., Sunnyside Park Owners Association, Inc. or Kirk Woolf.

7. Further this Affiant sayeth naught.

DATED this 1st day of May, 2008.


Kirk Woolf

SUBSCRIBED AND SWORN to before me this 1st day of May, 2008.


Notary Public for Idaho
Residing at: Idaho Falls
My Commission Expires: 06-09-09

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorneys listed below on this 1 day of May, 2008:

Document Served:

AFFIDAVIT OF KIRK WOOLF IN
OPPOSITION TO PLAINTIFF'S
MOTION TO AMEND TO ALLEGE
PUNITIVE DAMAGES

Attorneys Served:

Jeffrey D. Brunson, Esq.
Michael D. Gaffney, Esq.
BEARD ST. CLAIR
2105 Coronado Street
Idaho Falls, ID 83404

☐ U.S. Mail
☐ Facsimile
☒ Hand Delivery



Daniel R. Beck
FULLER & CARR

MARK R. FULLER (ISB No. 2698)
FULLER & CARR
410 MEMORIAL DRIVE, SUITE 201
P.O. BOX 50935
IDAHO FALLS, ID 83405-0935
TELEPHONE: (208) 524-5400

DISTRICT JUDICIAL COURT
BONNEVILLE COUNTY IDAHO

8 MAY -1 P4:08

ORIGINAL

ATTORNEY FOR DEFENDANT SUNNYSIDE PARK UTILITIES, INC.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS, INC., an) Case No. CV-06-7097
Idaho corporation,)

Plaintiff,) SUMMONS

v.)

SUNNYSIDE PARK UTILITIES,)
INC., an Idaho corporation,)
SUNNYSIDE PARK OWNERS)
ASSOCIATION, INC., an Idaho)
corporation, SUNNYSIDE)
INDUSTRIAL AND PROFESSIONAL)
PARK, LLC, an Idaho limited)
liability corporation, DOYLE)
BECK, an individual, and KIRK)
WOOLF, an individual.)

Defendants.)

SUNNYSIDE PARK UTILITIES,)
INC., an Idaho corporation,)

Counterclaimant,)

v.)

PRINCRAFT PRESS, INC., an)
Idaho corporation, and TRAVIS)
WATERS, an individual.)

Counter-defendants.)

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED COUNTERCLAIMANT.
THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE
UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

SUMMONS - 1

TO: TRAVIS WATERS

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court within 20 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the Counterclaimant in the Counterclaim.

A copy of the Counterclaim is served with this Summons. If you wish to seek the advice or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response requires compliance with Rule 10(a)(1) and other Idaho Rules of Civil Procedure and shall also include:

1. The title and number of this case.
2. If your response is an Answer to the Counterclaim, it must contain admissions or denials of the separate allegations of the Counterclaim and other defenses you may claim.
3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
4. Proof of mailing or delivery of a copy of your response to counterclaimant's attorney, as designated above.

To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this 1st day of May, 2008.

CLERK OF THE DISTRICT COURT

Ronald Longmire

BY: *Travis Waters*
Deputy Clerk

MARK R. FULLER (ISB No. 2698)
DANIEL R. BECK (ISB No. 7237)
FULLER & CARR
410 MEMORIAL DRIVE, SUITE 201
P.O. BOX 50935
IDAHO FALLS, ID 83405-0935
TELEPHONE: (208) 524-5400

DISTRICT 7TH JUDICIAL COURT
BONNEVILLE, IDAHO

8 MAY -1 2008

ATTORNEY FOR DEFENDANT SUNNYSIDE INDUSTRIAL AND PROFESSIONAL PARK, LLC, AND
SUNNYSIDE PARK UTILITIES, INC.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE**

PRINCRAFT PRESS, INC., an)	Case No. CV-06-7097
Idaho corporation,)	
)	
Plaintiff,)	
v.)	AFFIDAVIT OF MARK FULLER IN
)	OPPOSITION TO PLAINTIFF'S
)	MOTION TO AMEND TO ALLEGE
)	PUNITIVE DAMAGES
SUNNYSIDE PARK UTILITIES,)	
INC., an Idaho corporation,)	
SUNNYSIDE PARK OWNERS)	
ASSOCIATION, INC., an Idaho)	
corporation, SUNNYSIDE)	
INDUSTRIAL AND PROFESSIONAL)	
PARK, LLC, an Idaho limited)	
liability corporation, DOYLE)	
BECK, an individual, and KIRK)	
WOOLF, an individual.)	
)	
Defendants.)	
)	
<hr/>	
SUNNYSIDE PARK UTILITIES,)	
INC., an Idaho corporation.)	
)	
Counterclaimant,)	
v.)	
)	
PRINCRAFT PRESS, INC., an)	
Idaho corporation, and TRAVIS)	
WATERS, an individual.)	
)	
Counter-defendants.)	
<hr/>	

AFFIDAVIT OF MARK FULLER IN OPPOSITION TO PLAINTIFF'S
MOTION TO AMEND TO ALLEGE PUNITIVE DAMAGES - 1

STATE OF IDAHO)
) ss.
County of Bonneville)

Mark R. Fuller, being first duly sworn upon his oath states and alleges as follows:

1. Affiant is a resident of Bonneville County, State of Idaho and executes this Affidavit upon his personal knowledge.

2. Affiant is over the age of 18 and is competent to testify.

3. Affiant is an attorney licensed in the State of Idaho and is counsel for the Defendant Sunnyside Park Utilities, Inc. and Defendant Sunnyside Industrial and Professional Park, LLC.

4. Attached hereto as Exhibit A are true and correct copies of excerpts from the Deposition of Printcraft Press, Testimony of Travis Waters, dated April 25, 2007, including pgs. 57, 74-76, 79-81, 87-89, 103, 105, 109-111, 119, 204, Ex. 3, pg. 2, and Ex. 7.

5. Attached hereto as Exhibit B are true and correct copies of Plaintiff's Responses to Requests for Admissions No. 59 and 60.

6. Attached hereto as Exhibit C is a true and correct copy of the City of Idaho Falls, Septage Hauler Chain of Custody, dated September 4, 2007, which was obtained from the City of Idaho Falls, pursuant to a subpoena duces tecum served on the City of Idaho Falls on November 6, 2007.

7. Attached hereto as Exhibit D is a true and correct copy

of the City of Idaho Falls, Industrial Pretreatment Program, Industrial Wastewater Acceptance, Septage Hauler Permit, dated June 21, 2007, which was obtained from the City of Idaho Falls, pursuant to a subpoena duces tecum served on the City of Idaho Falls on November 6, 2007.

8. Attached hereto as Exhibit E is a true and correct copy of a Letter from Courtney Beebee, Deputy Attorney General for the State of Idaho, dated April 11, 2008, which was obtained from Kellye Eager pursuant to subpoena at her deposition on April 23, 2008.

9. Attached hereto as Exhibit F are true and correct copies of excerpts from the Report of David Smith, dated April 11, 2008, pgs. 8-9.

10. Attached hereto as Exhibit G are true and correct copies of excerpts of the Deposition of Doyle Beck, dated May 30, 2007, including pgs. 105-107, and 338-339.


11. Further this Affiant sayeth naught.

DATED this 1 day of May, 2008.

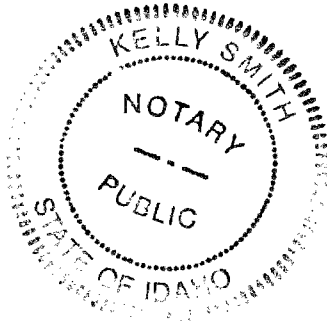


Mark R. Fuller

SUBSCRIBED AND SWORN to before me this 1 day of May, 2008.



Notary Public for Idaho
Residing at: Rigby
My Commission Expires: 06-28-2011



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorneys listed below on this 1 day of May, 2008:


Document Served:

AFFIDAVIT OF MARK FULLER IN
OPPOSITION TO PLAINTIFF'S MOTION
TO AMEND TO ALLEGE PUNITIVE
DAMAGES

Attorneys Served:

Jeffrey D. Brunson, Esq.
Michael D. Gaffney, Esq.
BEARD ST. CLAIR
2105 Coronado Street
Idaho Falls, ID 83404

____ U.S. Mail
____ Facsimile
✓ Hand Delivery



Mark R. Fuller
FULLER & CARR

Deposition of:

Travis Waters

April 25, 2007

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINTCRAFT PRESS, INC., an Idaho)	
corporation,)	
)	
Plaintiff,)	Case No.
)	CV-06-7097
vs.)	
)	
SUNNYSIDE UTILITIES, INC., an)	
Idaho corporation,)	
)	
Defendant.)	
)	

DEPOSITION OF TRAVIS WATERS

Wednesday, April 25, 2007, 9:00 a.m.

Idaho Falls, Idaho

Rebecca M. Martin,

CSR

EXHIBIT A

<p style="text-align: right;">Page 54</p> <p>1 A. I did, Crystal Water. 2 Q. Is that an individual or the name of the 3 company? 4 A. Name of the company. 5 Q. Crystal Water? 6 A. Yes. 7 Q. Are they here in Idaho Falls? 8 A. Yes. 9 Q. Do you know what happened to your old 10 system? 11 A. I still have it. 12 Q. Why? 13 A. Because it's mine. 14 Q. Does it function? Is it still connected 15 to the service somehow? 16 A. No. 17 Q. Did Crystal Water provide the new system 18 that's been installed? 19 A. Yes. 20 Q. You've requested a spec sheet from them 21 to get information from them about that machine? 22 A. Correct. 23 Q. Does the new machine consume less water 24 than the old machine? 25 A. Yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 Q. You don't know the name of the old 2 system? 3 A. I still have it, as I mentioned. I can 4 get it for you. 5 Q. The new system you think is a General 6 Electric. Do you know anything more about the 7 identification than that? 8 A. I don't. I looked at it briefly. It 9 had a snazzy name, and it had GE's logo on it. 10 Q. Looking at picture D on page 1 of 11 Exhibit *-003, can you identify for me how the 12 plumbing has been changed with the installation of 13 the new system? Have all of these lines been 14 eliminated? I'm still looking at picture D here. 15 You said this machine no longer is installed; is that 16 correct? 17 A. That's correct. The new machine, of 18 course, has the same, an inlet, an outlet, an RO 19 outlet. The plumbing is basically the same. I think 20 your question is where does it go, does it go down 21 the drain or outside. It goes outside. 22 Q. Looking in this upper right hand corner 23 of picture D on page 1 of Exhibit *-003, you said 24 that it goes to a T and then goes straight up. Do 25 you see where I'm referring to?</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. You'd indicated that the old machine 2 consumed about eight gallons of water to produce one 3 gallon of reverse osmosis water? 4 A. Correct. 5 Q. How many gallons of fresh water does the 6 new machine use to produce a gallon of reverse 7 osmosis water? 8 A. Less than eight to one. 9 Q. Do you know what that ratio is? 10 A. I don't. 11 Q. Who would know? 12 A. Crystal Water. 13 Q. Is there a specific individual at 14 Crystal Water who could provide that information? 15 A. Joe Blakely. 16 Q. Was Mr. Blakely the individual who 17 actually did the switch-out? 18 A. I believe so. 19 Q. You were referring to some document. Do 20 you have a spec sheet on the new machine? 21 A. No. I requested it, but I don't have 22 it. 23 Q. Will you provide a copy of that to your 24 attorney? 25 A. Sure.</p>	<p style="text-align: right;">Page 57</p> <p>1 A. Uh-huh. 2 Q. Just to the right of that is a valve. 3 What is the purpose for that valve? 4 A. Basically, it's a secondary way to let 5 that water out. Currently, we don't have that in 6 place. 7 Q. Was there previously a drain connected 8 to that valve going into the sewer system? 9 A. No. 10 Q. That valve has never been utilized? 11 A. No. 12 Q. The reverse osmosis system puts out 13 water while it's working; am I correct? 14 A. Correct. 15 Q. It clarifies the water; would you agree 16 with that? What word would you use to describe what 17 it does? 18 A. It takes water and filters it and takes 19 the pure water out. 20 Q. Did that reverse osmosis equipment ever 21 drain into the sewer system? 22 A. Yes. 23 Q. When? During what time period? 24 A. From when we moved in in January, 25 February of '06, until Mr. Beck asked me to drain it</p>

Page 74	Page 76
<p>1 A. The water that flows into the sink is 2 pure, it's clean. 3 Q. My question is, when it drains out the 4 bottom, having been utilized to wash parts, is there 5 any treatment of the discharge from that sink before 6 it goes into the septic system? 7 A. No. Everything that goes down that sink 8 is environmentally friendly. I'll provide those MSDS 9 sheets for you this afternoon. 10 Q. Who has access to that sink, all of your 11 employees? 12 A. It's not in a secure -- 13 Q. It's open to anybody who wants to come 14 in? 15 A. Not necessarily, but it's not a secured 16 area. 17 Q. It's not locked in a room anywhere? 18 A. Right. You don't need a secure access 19 to get there. 20 Q. Do you wash parts from the litho press 21 too? 22 A. No. 23 Q. Only the flexo press? 24 A. Only the flexo press. 25 Q. Look down at picture C on that same</p>	<p>1 Q. The picture that you have is primarily 2 red; is that correct? 3 A. No. It's primarily gray. 4 Q. May I see the color picture for just a 5 minute? I'm looking at what's in the bottom of that 6 sink. It looks to me like it's been used to wash red 7 colored ink. 8 A. You said, primarily the picture is red. 9 Primarily, the majority of that picture is gray. 10 Q. Let me restate the question. How many 11 different color inks do you wash? 12 A. Hundreds. 13 Q. Are you planning to bring me MSDS sheets 14 on the ink as well? 15 A. Yes. 16 MR. FULLER: Let's take a break for just a 17 minute. 18 (A break was taken from 11:02 a.m. to 19 11:17 a.m.) 20 Q. BY MR. FULLER: Can you identify for me 21 who constructed the building that Printcraft Press 22 now occupies? 23 A. CTR Development. 24 Q. When was it built? 25 A. '05, '06.</p>
Page 75	Page 77
<p>1 page. I assume that the sink in the upper right hand 2 corner of picture C is the same sink in the upper 3 right hand corner of picture A? 4 A. That sink is one unit. It's an L-shaped 5 unit. 6 Q. It is connected to the part on the left 7 of picture C? 8 A. Correct. 9 Q. How do they flow together, or is it just 10 one big sink? 11 A. Yeah. It's much like a kitchen sink 12 that has a left and right hand side, and they come 13 down to P-trap and come into a drain. 14 Q. Actually, both sides drain. It looks 15 like there's another drain in the left hand side of 16 picture C? 17 A. Yeah, they both drain. 18 Q. Do I understand that those ink sinks do 19 not go in the sewer? 20 A. No. 21 Q. They go directly into the sewer? 22 A. Correct. 23 Q. Is picture D a picture of the interior 24 of that sink? 25 A. As near as I can tell.</p>	<p>1 Q. What is your involvement with CTR, 2 personally? 3 A. It's an LLC, and I'm a manager, member I 4 should say, managing member. 5 Q. Who are the other members of CTR 6 Development? 7 A. There's one other member, and that's 8 Lawry Wilde. 9 Q. His last name is spelled, W-i-l-d-e? 10 A. Uh-huh. 11 Q. Did you seek approval from the 12 architectural control committee of the Sunnyside 13 Industrial and Professional Park before you 14 constructed the building Printcraft Press now 15 occupies? 16 A. Yes. I accessed the committee through 17 Doyle Beck. I never did meet with the committee in 18 whole. 19 Q. Who did you meet with? 20 A. Doyle Beck. 21 Q. Anyone else? 22 A. No. 23 Q. Did you have any discussions with 24 Mr. Beck regarding the anticipated water usage of the 25 building?</p>

Page 78	Page 80
<p>1 A. No.</p> <p>2 Q. Did you discuss with Mr. Beck the</p> <p>3 parameters of the building that you intended to</p> <p>4 construct, the size?</p> <p>5 A. Yes. I provided blueprints.</p> <p>6 Q. Who was the owner of the real estate,</p> <p>7 the dirt, at the time the building was constructed?</p> <p>8 A. Waters Land and Cattle bought the</p> <p>9 property from Miskin Scraper Works and then at some</p> <p>10 point did a quitclaim to CTR. I don't know the</p> <p>11 dates.</p> <p>12 Q. Who is Waters Land and Cattle Company?</p> <p>13 A. That's a company that my wife and I own.</p> <p>14 Q. Miskin owned the dirt, and it was sold</p> <p>15 to Waters Land and Cattle, and then it was sold to</p> <p>16 CTR?</p> <p>17 A. Correct.</p> <p>18 Q. Then it's been sold to somebody else</p> <p>19 since then. Who now owns the property?</p> <p>20 A. J&LB Properties.</p> <p>21 Q. Who acted on behalf of Waters Land and</p> <p>22 Cattle in negotiating the purchase of the property</p> <p>23 from Miskin Scraper Works?</p> <p>24 A. Myself.</p> <p>25 Q. Who negotiated that sale on behalf of</p>	<p>1 Q. They were running from what facilities?</p> <p>2 A. Sunnyside Utilities.</p> <p>3 Q. Did you view those connection lines</p> <p>4 yourself?</p> <p>5 A. At that time?</p> <p>6 Q. At the time of purchase.</p> <p>7 A. No. I viewed the markers marking them.</p> <p>8 Q. How do you know that they were there?</p> <p>9 A. There were markers marking them.</p> <p>10 Q. Describe those for me.</p> <p>11 A. I think they were green fence posts or</p> <p>12 two-by-fours, one of the two.</p> <p>13 Q. What do you recall seeing? Those are</p> <p>14 distinctly different markers. I want to know what</p> <p>15 you recall.</p> <p>16 A. I don't recall. I just remember</p> <p>17 markers.</p> <p>18 Q. What did Mr. Miskin tell you was the</p> <p>19 service already in place?</p> <p>20 A. I don't remember asking or him saying.</p> <p>21 Q. Let me be very specific. Did Mark</p> <p>22 Miskin represent to you that the property he was</p> <p>23 selling you had sewer service in place?</p> <p>24 A. Yes.</p> <p>25 Q. What did he say?</p>
Page 79	Page 81
<p>1 Miskin?</p> <p>2 A. Mark Miskin.</p> <p>3 Q. Were any promises or representations</p> <p>4 made to Waters Land and Cattle Company by Miskin</p> <p>5 Scraper Works prior to the purchase of the real</p> <p>6 property with regard to water or utility access?</p> <p>7 A. Can you read that?</p> <p>8 (The record was read.)</p> <p>9 THE WITNESS: It was represented with water,</p> <p>10 sewer, and county taxes, just like the sign out there</p> <p>11 on the street.</p> <p>12 Q. BY MR. FULLER: What sign?</p> <p>13 A. The Sunnyside Industrial Park sign.</p> <p>14 Q. Did Miskin agree to provide you with</p> <p>15 utilities?</p> <p>16 A. Miskin agreed to sell me a lot that had</p> <p>17 utilities with it.</p> <p>18 Q. Did the lot have utilities at the time</p> <p>19 you purchased it? Were there any services on the lot</p> <p>20 at the date of purchase?</p> <p>21 A. Yes.</p> <p>22 Q. Describe that for me.</p> <p>23 A. There was, I think, a one inch or inch</p> <p>24 and a half poly line feeding the east side, as well</p> <p>25 as a four inch sewer line feeding the east side.</p>	<p>1 A. I don't recall.</p> <p>2 Q. Did Mark Miskin represent to you that</p> <p>3 the property he was selling you had water service in</p> <p>4 place?</p> <p>5 A. Yes.</p> <p>6 Q. What did he say?</p> <p>7 A. I don't recall.</p> <p>8 Q. Prior to your purchase of the property,</p> <p>9 were any representations regarding sewer service made</p> <p>10 to you by any representative of Sunnyside Park</p> <p>11 Utilities?</p> <p>12 A. Can you read that?</p> <p>13 (The record was read.)</p> <p>14 THE WITNESS: Prior to me purchasing, no.</p> <p>15 Q. BY MR. FULLER: You hadn't had any</p> <p>16 discussions with Mr. Wolf or Mr. Beck regarding sewer</p> <p>17 or water service?</p> <p>18 A. I discussed the lots in general with</p> <p>19 Mr. Wolf because I was looking at buying some</p> <p>20 property from him in there where it was discussed</p> <p>21 that they had sewer, they had water, and they had</p> <p>22 county taxes.</p> <p>23 Q. What other parcels were you looking at</p> <p>24 within the subdivision?</p> <p>25 A. Block 4 Lot 5 and Block 1 Lot 10.</p>

<p style="text-align: right;">Page 86</p> <p>1 this acquired with your participation?</p> <p>2 A. Yes.</p> <p>3 Q. It actually says down here the</p> <p>4 contractor is Teton West and Travis Waters. Can you</p> <p>5 indicate for me what was your personal involvement as</p> <p>6 a contractor? The previous certificate of occupancy,</p> <p>7 the temporary one just showed Teton West. Why is</p> <p>8 your name on Exhibit *-006?</p> <p>9 A. I don't know.</p> <p>10 Q. Were you a contractor involved in the</p> <p>11 construction of this building?</p> <p>12 A. No.</p> <p>13 Q. It also shows the owner as being</p> <p>14 Printcraft Press and Waters Land and Cattle, LLC; is</p> <p>15 that correct?</p> <p>16 A. Not as of the date on that certificate.</p> <p>17 Q. That is what it says, did I read it</p> <p>18 correctly?</p> <p>19 A. Yes.</p> <p>20 Q. But that isn't accurate, is it?</p> <p>21 A. Correct.</p> <p>22 Q. As of February of 2007, Printcraft and</p> <p>23 Waters Land and Cattle had no ownership interest in</p> <p>24 the property?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 88</p> <p>1 Q. Can you explain the terms of that</p> <p>2 agreement which would have been, as I understand it,</p> <p>3 then, between Printcraft and CTR Development?</p> <p>4 A. It was a verbal agreement that we would</p> <p>5 occupy the building, the east half.</p> <p>6 Q. What were the terms of that verbal</p> <p>7 agreement?</p> <p>8 A. There were no terms at the beginning.</p> <p>9 Q. Was there a length of time that</p> <p>10 Printcraft could occupy, had that been decided?</p> <p>11 A. No.</p> <p>12 Q. Was there a rate that Printcraft would</p> <p>13 pay for its rights of occupancy?</p> <p>14 A. No.</p> <p>15 (Exhibit *-007 marked.)</p> <p>16 Q. BY MR. FULLER: I'm handing you what's</p> <p>17 been marked as Exhibit *-007. Can you identify that</p> <p>18 document for me?</p> <p>19 A. It looks like a copy of the blueprints</p> <p>20 for the building.</p> <p>21 Q. It says they were prepared for CTR</p> <p>22 Development. Were you involved in requesting these</p> <p>23 drawings to be prepared?</p> <p>24 A. Yes, as a member of CTR Development.</p> <p>25 Q. It indicates these were prepared by</p>
<p style="text-align: right;">Page 87</p> <p>1 Q. Can you help me understand why these</p> <p>2 errors are on this certificate of occupancy that you</p> <p>3 applied for?</p> <p>4 A. No. That would be a county question.</p> <p>5 Q. On February 1st of 2007 when this</p> <p>6 certificate of occupancy was issued, how long had</p> <p>7 Printcraft already been in occupancy in the building?</p> <p>8 A. Probably about a year.</p> <p>9 Q. Was the building constructed</p> <p>10 specifically for Printcraft Press to occupy?</p> <p>11 A. A portion of it was.</p> <p>12 Q. Which portion?</p> <p>13 A. The east half.</p> <p>14 Q. Is Waters Land and Cattle Company an</p> <p>15 occupant of the building?</p> <p>16 A. No.</p> <p>17 Q. Do you know why Waters Land and Cattle</p> <p>18 was issued a certificate of occupancy?</p> <p>19 A. No. I assume it's because it was on the</p> <p>20 original ownership of the dirt.</p> <p>21 Q. At the time the building was</p> <p>22 constructed, did Printcraft already have an agreement</p> <p>23 with the owner of the property for occupancy of the</p> <p>24 building after construction was completed?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 89</p> <p>1 Design Intelligence, LLC. Is that your recollection</p> <p>2 of who drew up these plans?</p> <p>3 A. Correct.</p> <p>4 Q. These don't show a date. Can you</p> <p>5 indicate for me when these were prepared?</p> <p>6 A. Probably early 2005. They actually show</p> <p>7 2005 on the bottom.</p> <p>8 Q. You're correct. It shows an account</p> <p>9 number 2005-128. Okay. Do these accurately describe</p> <p>10 the building that was, in fact, constructed?</p> <p>11 A. Very close. It looks like there were</p> <p>12 some minor changes made.</p> <p>13 Q. You'd indicated that there were eight</p> <p>14 bathrooms?</p> <p>15 A. This is actually missing a sheet.</p> <p>16 Q. What sheet is missing?</p> <p>17 A. I assume it's A4.</p> <p>18 Q. Were these the documents that you</p> <p>19 provided to the architectural control committee?</p> <p>20 A. They're missing a sheet that I provided.</p> <p>21 Q. Do you have that sheet with you today?</p> <p>22 A. No.</p> <p>23 Q. What would have been on sheet A4, if</p> <p>24 that was provided to them?</p> <p>25 A. If you look at A2, there's a stairway</p>

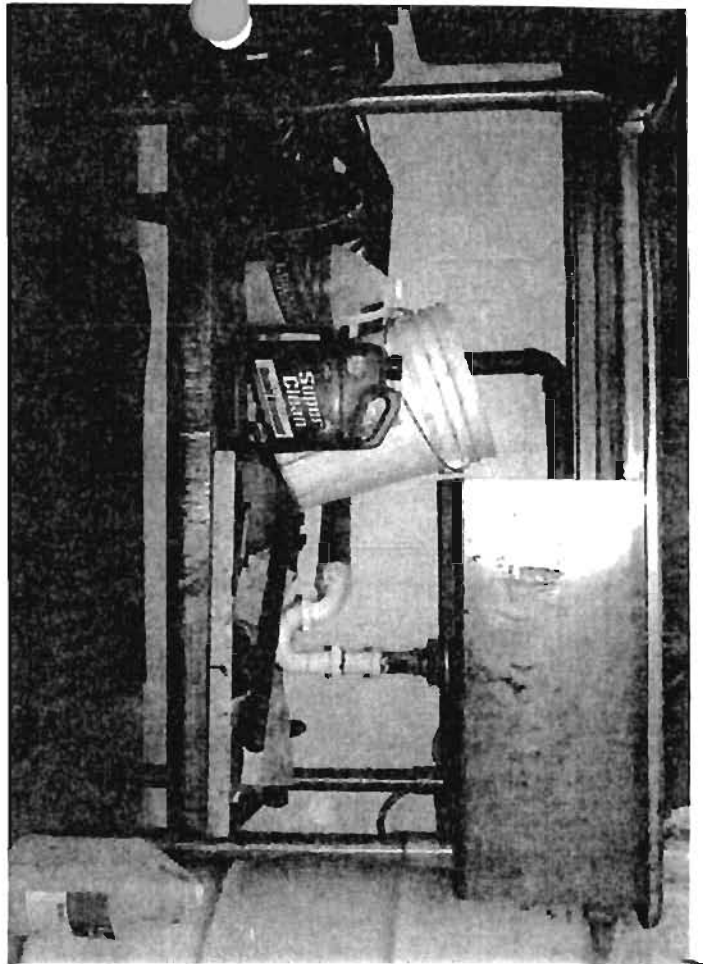
<p style="text-align: right;">Page 102</p> <p>1 with regard to maintenance and upkeep of the building 2 under the lease agreement it has with CTR 3 Development? 4 A. None. 5 Q. Who is responsible for maintaining the 6 structure of the building? 7 A. I don't know. 8 Q. Does Printcraft have any obligations to 9 maintain any of the equipment that services the 10 building as part of its occupancy obligation? 11 A. Explain equipment. 12 Q. There's a humidifier? 13 A. Printcraft would maintain that. 14 Q. What else does Printcraft have to 15 maintain? 16 A. Light bulbs, carpet, paint. 17 Q. Is Printcraft required to pay the 18 insurance costs for the building? 19 A. I don't know. 20 Q. Is Printcraft required to pay the taxes, 21 the real property taxes on the building? 22 A. No. 23 Q. When did the lease agreement between 24 Printcraft and CTR Development begin? 25 A. Never.</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Could you turn with me to page 4 2 paragraph 4. This provision addresses the issue of 3 assignment and subleasing. The last sentence reads, 4 it is understood that lessee, intends to sublease a 5 portion of the leased premises to Printcraft Press, 6 Inc., and lessor hereby consents to such sublease. 7 Are you aware if any such sublease exists? 8 A. I thought I said we had a verbal 9 agreement with CTR Management, which I would construe 10 as that. 11 Q. That verbal month to month agreement is 12 what is referred to here as a sublease? 13 A. I would assume. 14 Q. You don't know what the rental amount 15 is. Do you know who the rent is paid to? 16 A. Printcraft Press pays the rent to CTR 17 Management. 18 Q. How often is that rent paid? 19 A. Monthly. 20 Q. How long does Printcraft intend to 21 occupy the building? 22 A. 10 years from the inception, or when we 23 moved in. 24 Q. Do you have any plans to move earlier 25 than that, as you sit here today?</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. Are you just there on a month to month 2 basis? 3 A. Yes. 4 Q. There is no written agreement in any 5 form? 6 A. No. 7 (Exhibit *-008 marked.) 8 Q. BY MR. FULLER: I'm handing you what's 9 been marked as Exhibit *-008. Are you familiar with 10 this agreement? 11 A. I am. 12 Q. Was Printcraft Press involved at all in 13 negotiation of this lease agreement? 14 A. No. 15 Q. Does CTR have any rights under this 16 lease agreement? 17 MR. ERICKSON: I'm going to object to that 18 on the basis this is a 30(b)(6) on behalf of 19 Printcraft Press. If you know the answer, go ahead 20 and give it. 21 THE WITNESS: Could you be more specific? 22 (The record was read.) 23 Q. BY MR. FULLER: Does Printcraft Press 24 have any rights under this agreement? 25 A. I don't know.</p>	<p style="text-align: right;">Page 105</p> <p>1 A. No. 2 Q. When did Printcraft Press connect to 3 Sunnyside Park Utilities' sewer system? 4 A. I don't think Printcraft Press ever did 5 connect. 6 Q. Who is connected to the system? 7 A. CTR Management is leasing a building 8 from J&LB Properties that is connected to the -- that 9 was connected to the sewer system. 10 Q. What was Printcraft Press' involvement 11 in the process of connection of the building to 12 Sunnyside Sewers' service? 13 A. None. 14 Q. Do you have any knowledge of who paid 15 the connection fee? 16 A. CTR Development. 17 Q. How do you know that? 18 A. I've seen a voided check, and I've 19 signed the check. 20 Q. What did Printcraft Press pay as part of 21 the connection fee? 22 A. Nothing, to my knowledge. 23 (Exhibit *-009 marked.) 24 Q. BY MR. FULLER: I'll hand you what's 25 been marked as Exhibit *-009. To my knowledge, this</p>

<p style="text-align: right;">Page 106</p> <p>1 was provided by you. Is this a copy of the canceled 2 check that you were referring to? 3 A. No. 4 Q. Do you know what this is? 5 A. I don't. It looks like a statement out 6 of Quickbooks or something. 7 MR. ERICKSON: For the record, Mark, I think 8 we actually provided you a copy of the check along 9 with these documents is my recollection. I'm 10 certainly willing to go back and take a look again at 11 what we produced. My recollection was seeing it and 12 providing it in connection with these documents. 13 MR. FULLER: We'll check again. I think 14 this is the only one we've been able to locate. It 15 actually has what I think is the check number written 16 up here in the corner. 17 MR. ERICKSON: What you'll find unusual is 18 it wasn't printed by a computer. It says Sunnyside 19 Utilities, Incorporated in handwriting. That's 20 probably what you'll need to look for. I'll go back 21 and double-check on that as well. 22 Q. BY MR. FULLER: All I'm trying to 23 establish is that Printcraft Press itself paid 24 nothing for the cost of connection; isn't that 25 correct?</p>	<p style="text-align: right;">Page 108</p> <p>1 A. They were the owner of the building. 2 Q. Did CTR Development know what kind of 3 sewer service Printcraft Press would need when it 4 subleased the property to Printcraft? 5 A. Yes. 6 Q. Can you explain for me what was 7 discussed between Printcraft and CTR Development 8 about the needs of Printcraft at the time that 9 sublease was agreed to? 10 A. That they'd need four bathrooms, a drain 11 for the Roland 305, a water heater, a break room with 12 a sink in it, and a wash-up area for the flexo area. 13 Q. Was there any discussion about the kind 14 of chemicals that would be discharged by Printcraft 15 with its processed waste? 16 A. There was no need for a discussion, 17 because there was nothing of any alarm. 18 Q. It wasn't discussed? 19 A. Huh-uh. 20 Q. Who would be the participants in this 21 conversation on behalf of Printcraft? 22 A. Travis Waters. 23 Q. Who would be the participant in that 24 conversation on behalf of CTR Development? 25 A. Lawry Wilde.</p>
<p style="text-align: right;">Page 107</p> <p>1 A. Correct. I have a copy of that check. 2 I'm sure I could find it if you want. 3 Q. If you wouldn't mind, that would be 4 great. 5 MR. ERICKSON: I'll double-check, too, Mark. 6 I kept a complete copy of everything that I sent to 7 you. 8 MR. FULLER: Let's stop for just a minute. 9 (A break was taken from 12:02 p.m. to 10 12:03 p.m.) 11 Q. BY MR. FULLER: We've gone off the 12 record for just a minute, Mr. Waters. You provided 13 me with a copy of check number 5896, which is now 14 page 3 of Exhibit *-009; is that correct? 15 A. Correct. 16 MR. FULLER: By stipulation of counsel, 17 we've agreed to just attach that as an additional 18 page of Exhibit *-009; is that correct, Counsel? 19 MR. ERICKSON: That is correct. 20 Q. BY MR. FULLER: Just to finalize this, 21 am I correct that the connection fees were paid by 22 CTR Development, LLC, and that Printcraft Press paid 23 no portion of the connection fee? 24 A. That's correct. 25 Q. Why did CTR Development pay the fee?</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. Do you recall a specific conversation 2 regarding the needs? 3 A. No. There was hours and hours and hours 4 of conversations and details concerning the building. 5 Q. Did CTR Development make any promises to 6 Printcraft regarding the type of sewer services that 7 would be available? 8 A. No. There was an assumption that there 9 was sewer and water. 10 Q. On what was that assumption based? 11 A. That that subdivision had sewer and 12 water. 13 Q. Anything else? 14 A. No. 15 Q. Was there any investigation made by 16 Printcraft Press regarding the services provided by 17 Sunnyside Park Utilities before construction of the 18 building began? 19 A. No. 20 Q. Was there any investigation made by 21 Printcraft Press regarding the services provided by 22 Sunnyside Park Utilities before Printcraft began 23 occupancy? 24 A. No. 25 Q. Did Sunnyside promise anything to</p>

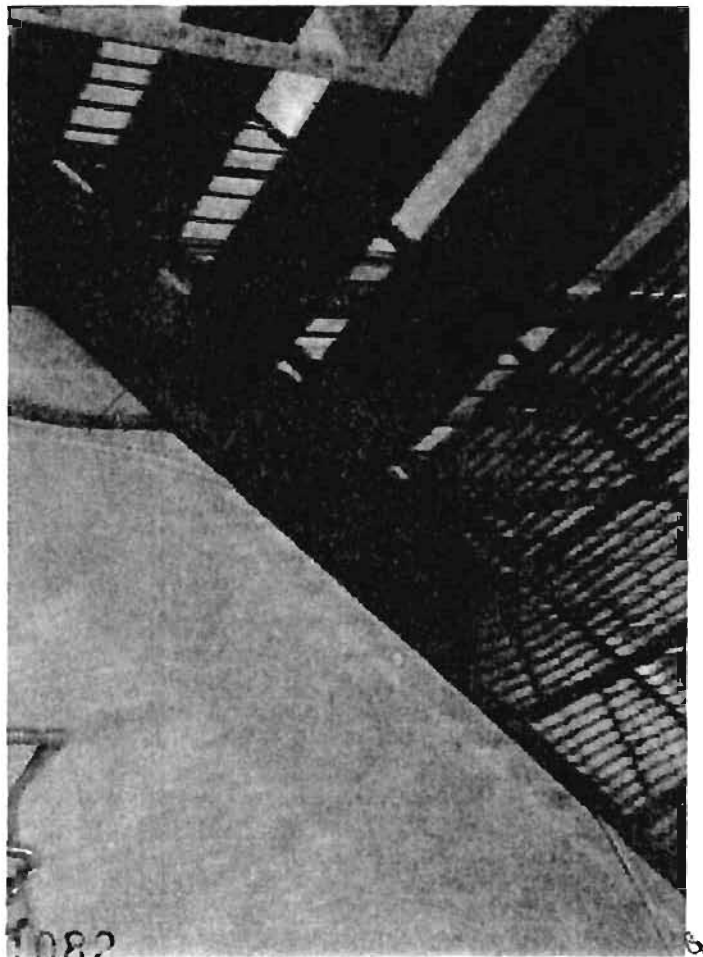
<p style="text-align: right;">Page 110</p> <p>1 Printcraft before Printcraft began occupancy?</p> <p>2 A. No.</p> <p>3 Q. Did Sunnyside promise anything to CTR?</p> <p>4 A. Yes.</p> <p>5 Q. What?</p> <p>6 A. Sewer and water service.</p> <p>7 Q. To whom were those promises made at CTR</p> <p>8 Development?</p> <p>9 A. I'd say Travis Waters and Lawry Wilde.</p> <p>10 Q. By whom were those promises made by</p> <p>11 Sunnyside?</p> <p>12 A. I would say it's through a document</p> <p>13 that's filed at Bonneville County that says that</p> <p>14 Sunnyside will provide sewer and water.</p> <p>15 Q. Which document are you referring to?</p> <p>16 A. I think it's the development agreement.</p> <p>17 the plat has that on there. I think there's multiple</p> <p>18 documents, actually, that have the commitment between</p> <p>19 Sunnyside Utilities, Sunnyside Industrial Park and</p> <p>20 Bonneville County and District Seven.</p> <p>21 Q. My question was, what promises were made</p> <p>22 by Sunnyside Utilities to CTR. You had indicated</p> <p>23 that CTR was promised sewer and water and that those</p> <p>24 promises were made to Travis and Lawry.</p> <p>25 My next question was, who at Sunnyside</p>	<p style="text-align: right;">Page 112</p> <p>1 Q. Those are the closing documents you're</p> <p>2 referring to?</p> <p>3 A. Right. And you prepared some of those</p> <p>4 documents and then filed them with the county. Then</p> <p>5 the title company requested a copy of those filed</p> <p>6 documents and provided them to us.</p> <p>7 Q. Did you keep a copy of your closing</p> <p>8 documents, your closing file?</p> <p>9 A. Yes. I'm sure I've got that.</p> <p>10 Q. Do you have those?</p> <p>11 A. No.</p> <p>12 Q. Would you have those available to bring</p> <p>13 back with you after lunch?</p> <p>14 A. No.</p> <p>15 Q. They are available to produce to your</p> <p>16 attorney?</p> <p>17 A. Yes.</p> <p>18 Q. Who was the closing title office?</p> <p>19 A. I don't recall.</p> <p>20 MR. FULLER: I think that's a good place for</p> <p>21 us to stop at lunch. Why don't we start back up</p> <p>22 again at 1:15.</p> <p>23 (A break was taken from 12:11 p.m. to</p> <p>24 1:33 p.m.)</p> <p>25 Q. BY MR. FULLER: We're back on the record</p>
<p style="text-align: right;">Page 111</p> <p>1 made those promises? Can you identify any verbal</p> <p>2 statements, or are you relying only upon the written</p> <p>3 documents you've referred to?</p> <p>4 A. I don't recall any verbal.</p> <p>5 Q. We're just talking about the written</p> <p>6 documents?</p> <p>7 A. Correct.</p> <p>8 Q. Was there any direct correspondence,</p> <p>9 letters, between Sunnyside Utilities and CTR</p> <p>10 promising specific services?</p> <p>11 A. I don't know, not that I know of.</p> <p>12 Q. Okay. So we're talking about the</p> <p>13 development agreement, the plat. What other</p> <p>14 documents did CTR rely upon regarding sewer and water</p> <p>15 services?</p> <p>16 A. The CCNRs, the development agreement,</p> <p>17 the plat, anything that we would have gotten at</p> <p>18 closing.</p> <p>19 Q. Did Sunnyside participate in preparing</p> <p>20 any of those closing documents?</p> <p>21 A. Yeah. It's got your name on a lot of</p> <p>22 those documents.</p> <p>23 Q. This is the documents by which the</p> <p>24 property was acquired from Miskin, right?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 113</p> <p>1 after a lunch break. You understand, Mr. Waters,</p> <p>2 that you're still under oath?</p> <p>3 A. Yes.</p> <p>4 Q. I want to ask you for just a minute</p> <p>5 about a document we had already discussed this</p> <p>6 morning. I'm handing you what's been marked</p> <p>7 Exhibit *-007. Is this the document that you</p> <p>8 actually dropped off to Mr. Beck? You indicated</p> <p>9 there was also a fourth page to it?</p> <p>10 A. I dropped off full size blueprints in a</p> <p>11 roll, not an 8 1/2-by-11 representation of that.</p> <p>12 Q. How large would they have been?</p> <p>13 A. 24-by-36.</p> <p>14 Q. This size?</p> <p>15 A. I dropped those off as well.</p> <p>16 Q. You're saying they were bigger than</p> <p>17 this?</p> <p>18 A. Yeah. There should have been a set that</p> <p>19 was bigger than that that had the site plan with it</p> <p>20 from Mountain River Engineering and a full, just like</p> <p>21 I gave to the county that would reside on the</p> <p>22 premises during construction.</p> <p>23 Q. Can you turn to the second page of</p> <p>24 Exhibit *-007 for me? There's some handwriting on</p> <p>25 the lower left; is that your handwriting?</p>

<p style="text-align: right;">Page 118</p> <p>1 Q. This document was dropped off to 2 Mr. Beck after you had a visit with him; is that 3 correct? 4 A. No. I think we visited at the time I 5 dropped it off. 6 Q. Why were these items written on this 7 document if it was given to him during a meeting with 8 him? 9 A. So that I wouldn't forget to address 10 them. 11 Q. You wrote these on in advance of the 12 meeting? 13 A. I believe so. 14 Q. Then discussed them with him at the 15 meeting? 16 A. Right. 17 Q. If I understand your testimony, in both 18 cases he said he would get back to you but did not? 19 A. With the railroad easement, he was going 20 to get me that. With the phone line, I don't 21 remember if he at that point said, that's your 22 responsibility, and I just left it at that, or he got 23 back with me later, I don't recall. 24 Q. Did Printcraft inform Sunnyside about 25 the types and quantity of waste Printcraft intended</p>	<p style="text-align: right;">Page 120</p> <p>1 MR. ERICKSON: Let me tell you how we 2 organized these, too, so it may help you in aid of 3 your questions. What we did is, we prepared these 4 documents by system, like, the flexo system or the 5 litho system, some of which would be discharged, some 6 of which would not be discharged. We wanted to keep 7 it all together so you could go through that way and 8 talk about one complete system and be done with it. 9 What I'm hoping Travis was able to do 10 is, he'll identify for you what would have been 11 discharged and what would not have been discharged. 12 In other words, for the litho process, some of the 13 chemicals did go into the sewer, some of them did 14 not. But all the MSDS sheets for that process are 15 included behind that tab. Does that make sense? 16 MR. FULLER: I'm afraid it doesn't. Try 17 once more. 18 MR. ERICKSON: In order to use the litho 19 system, there are a number of chemicals that are used 20 in that process. Travis talked earlier today about 21 some that are used with the water and would have been 22 discharged with the water. Some of those chemicals 23 are not discharged into the sewer system, but they're 24 still used in the process. 25 MR. FULLER: They're consumed in the</p>
<p style="text-align: right;">Page 119</p> <p>1 to discharge into Sunnyside's septic system? 2 A. I need you to say Sunnyside Utilities or 3 Sunnyside Industrial Park so we both know who you're 4 talking about. 5 Q. Unless I specify otherwise, my questions 6 concern Sunnyside Utilities. I will identify if I 7 mean anything other than that entity; are you 8 comfortable with that? 9 A. I am. 10 Q. Let me restate the question. Did 11 Printcraft inform Sunnyside about the types and 12 quantities of waste Printcraft intended to discharge 13 into Sunnyside's septic system? 14 A. No. 15 Q. What was Sunnyside told by Printcraft, 16 if anything, would be discharged? 17 A. Nothing. 18 Q. You have been asked to bring documents 19 that specifically identify all chemicals and other 20 substances discharged into Sunnyside's sewer system 21 by Printcraft. You asked to delay that until the 22 beginning of the afternoon to gather those documents. 23 Do you have documents in compliance with that 24 request? 25 A. I do.</p>	<p style="text-align: right;">Page 121</p> <p>1 process? 2 MR. ERICKSON: I'm not sure if they're 3 consumed or recirculated or collected and disposed 4 of, but Travis can answer all those questions for 5 you. In your subpoena you listed two specific issues 6 for MSDS, those that would have been discharged and 7 those that would have been used that were disposed of 8 a different way. 9 MR. FULLER: That's correct. 10 MR. ERICKSON: What we did is simply provide 11 you a list of all chemicals for each specific 12 process, that's how we categorized them, and Travis 13 will be able to identify for you which of those would 14 have been discharged and which of those would have 15 not been discharged. 16 MR. FULLER: The binder you have given me, 17 these are my copies? 18 THE WITNESS: That's my only copy. 19 MR. ERICKSON: You'll see where the sticky 20 notes are, those are the tabs and the categories that 21 have been prepared for each of those processes. 22 MR. FULLER: Why don't I have him explain 23 the process. As I indicated to you, I have a brief 24 hearing that will only take 15 minutes at 3:00. That 25 will be a good time to take a break, and then my</p>

<p style="text-align: right;">Page 202</p> <p>1 meet with Channel 8 or Channel 6. That's my 2 recollection. 3 (Exhibit *-019 marked.) 4 Q. BY MR. FULLER: I'll hand you an 5 article, exhibit marked as Exhibit *-019. Let me be 6 very specific. Did you contact the Post Register, or 7 did the Post Register contact you? 8 A. I don't recall, but I can get that 9 information for you. 10 Q. Who would know that? 11 A. I would on my lap top. I had 12 correspondence back and forth with Paul Menser. I 13 can go back and see where that initiated. 14 Q. Do you recognize that as a copy of the 15 article that was published after your conversation 16 with Mr. Menser? It's on two pages, there's the 17 photograph, and then the wording is on the next page. 18 A. Sure. 19 Q. I'd like you to look with me at the 20 second page in the center column, the third full 21 paragraph. He said that the only discharge from his 22 plant that might be objectionable is brine from his 23 water softener, which is part of the reverse osmosis 24 that takes ordinary well water and removes minerals 25 and impurities before it is used in the printing</p>	<p style="text-align: right;">Page 204</p> <p>1 it relates to the system into which you are 2 discharging? 3 A. Then or now? 4 Q. Let's start with then. 5 A. Then I was oblivious to what this whole 6 system was or wasn't, that it was basically a 7 residential septic system for a whole commercial 8 subdivision. 9 Q. Did you understand at the time that you 10 could discharge any quantity that you wished? 11 A. Yes. 12 Q. That there were no limitations on the 13 quantity that you could dispose of? 14 A. When we came into the subdivision, I had 15 no idea that there had been issues with District 16 Seven limiting the amount of flows into that septic 17 system. 18 Q. Did you have any contact with District 19 Seven at the time you began construction? 20 A. No. 21 Q. When did you first have contact with 22 District Seven? 23 A. It was probably July or August I was 24 observing what was going on down there with the 25 Band-Aid fix for the septic tanks and observed</p>
<p style="text-align: right;">Page 203</p> <p>1 process. He estimated that Printcraft discharges at 2 most 500 gallons a day. Is that an accurate 3 statement of your statement to Mr. Menser? 4 A. No. 5 Q. How is it wrong? 6 A. Our flows are more like 850 to 1,000 a 7 day. 8 Q. 500 is in error too low? 9 A. Yes. 10 Q. What number did you tell him? 11 A. I don't recall. Any of those numbers 12 are within what we're allowed through IDAPA. 13 Q. What amount are you allowed through 14 IDAPA? 15 A. About 1,300 gallons a day. 16 Q. What is that based on? 17 A. The IDAPA Code. 18 Q. How do you calculate that? 19 A. Based on employees, size of the 20 business, number of employees. 21 Q. Does that have any reference to the size 22 of the system into which you are discharging? 23 A. No, not that I recall. 24 Q. Do you understand there to be any 25 restriction on the quantities that you discharge as</p>	<p style="text-align: right;">Page 205</p> <p>1 somebody down there taking pictures. I asked her who 2 she was, she said she was with District Seven. 3 Q. Do you recall her name? 4 A. I don't. 5 Q. Do you know her name now? 6 A. No. I'd never seen her before that, 7 haven't seen her since. 8 Q. With regard to the paragraph that I read 9 from the center column of page 2 of Exhibit *-019, 10 you indicated that Mr. Menser quoted the wrong 11 gallonage per day. Other than that, does he 12 accurately state what you told him? 13 A. I wouldn't let him talk for me in there. 14 I don't think it's very accurate, but I'm not going 15 to -- 16 Q. What do you disagree with in that 17 paragraph? What is wrong? 18 MR. ERICKSON: Counsel, could you identify 19 that paragraph for me again? 20 MR. FULLER: It's the third full paragraph 21 in the center column beginning with the word he. 22 THE WITNESS: Only, I think is a little, 23 too, specific, not that I've got other things in 24 mind. The water softener feeds the water heater as 25 well. He make s it sounds like it's specifically for</p>

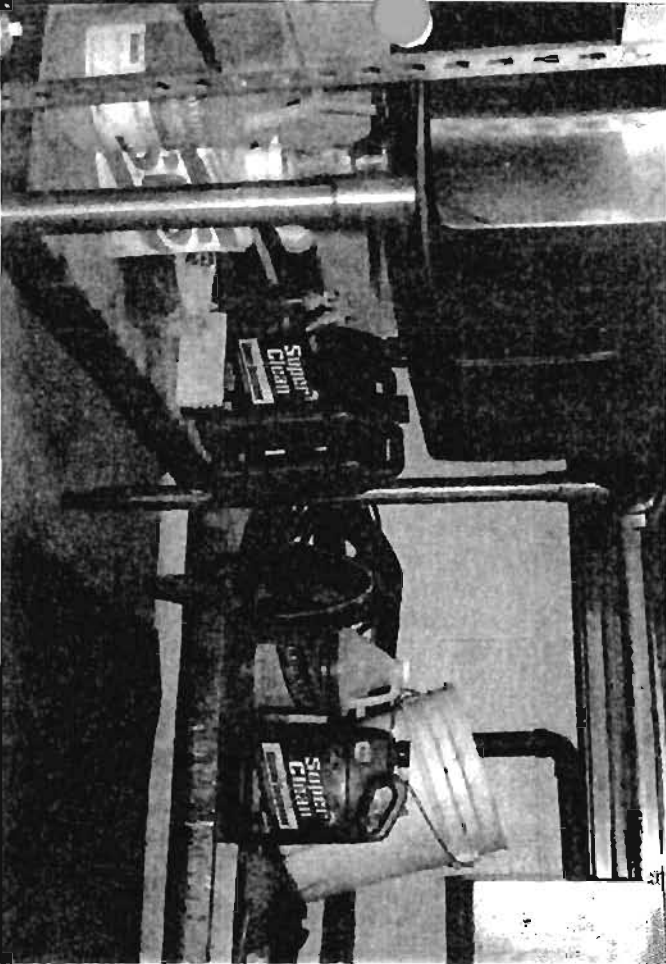


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8

1082



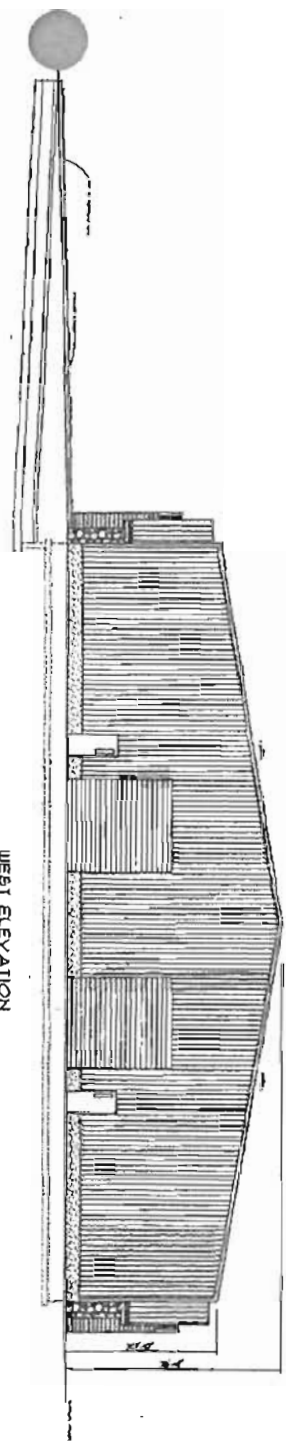
9



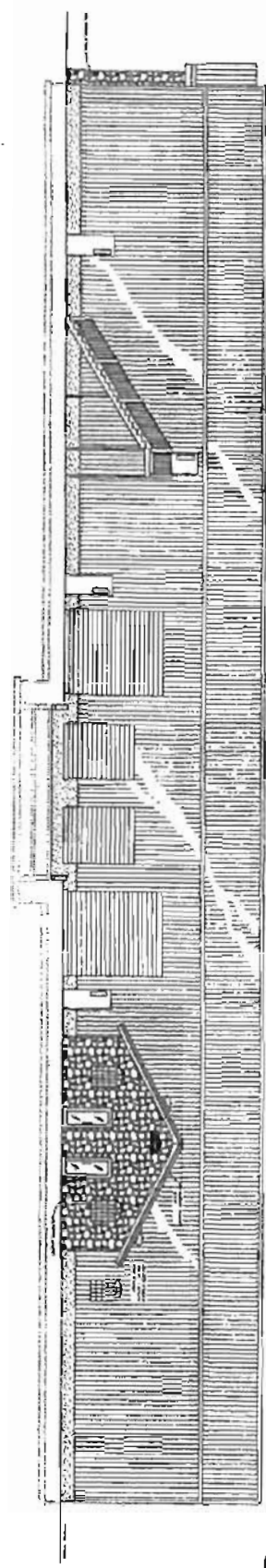
10

1. The building is a single-story structure with a gabled roof. The exterior walls are finished with horizontal siding. The roof is covered with asphalt shingles. The building is situated on a lot with a driveway on the left side. The building is located at 1234 Main Street, Anytown, USA. The building is owned by John Doe. The building is used for residential purposes. The building is in good condition. The building is a good example of a single-story house. The building is a good example of a house with a gabled roof. The building is a good example of a house with horizontal siding. The building is a good example of a house with asphalt shingles. The building is a good example of a house with a driveway. The building is a good example of a house on a lot. The building is a good example of a house in Anytown, USA. The building is a good example of a house owned by John Doe. The building is a good example of a house used for residential purposes. The building is a good example of a house in good condition. The building is a good example of a single-story house. The building is a good example of a house with a gabled roof. The building is a good example of a house with horizontal siding. The building is a good example of a house with asphalt shingles. The building is a good example of a house with a driveway. The building is a good example of a house on a lot. The building is a good example of a house in Anytown, USA. The building is a good example of a house owned by John Doe. The building is a good example of a house used for residential purposes. The building is a good example of a house in good condition.

WEST ELEVATION
1/8" = 1'-0"



NORTH ELEVATION
1/8" = 1'-0"



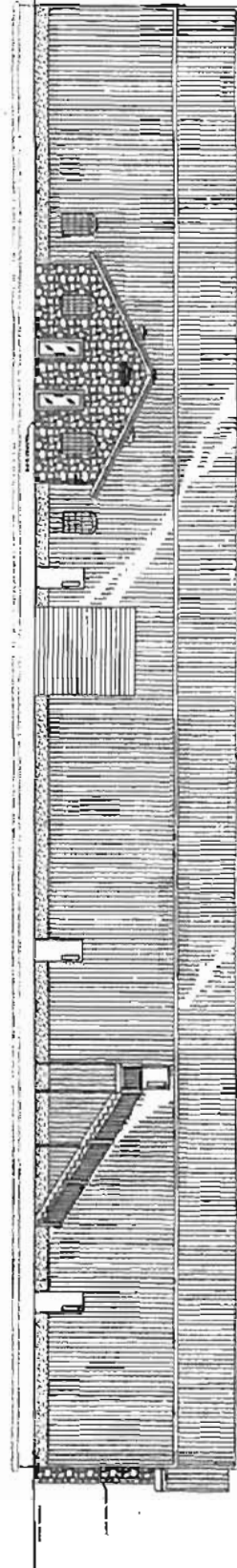
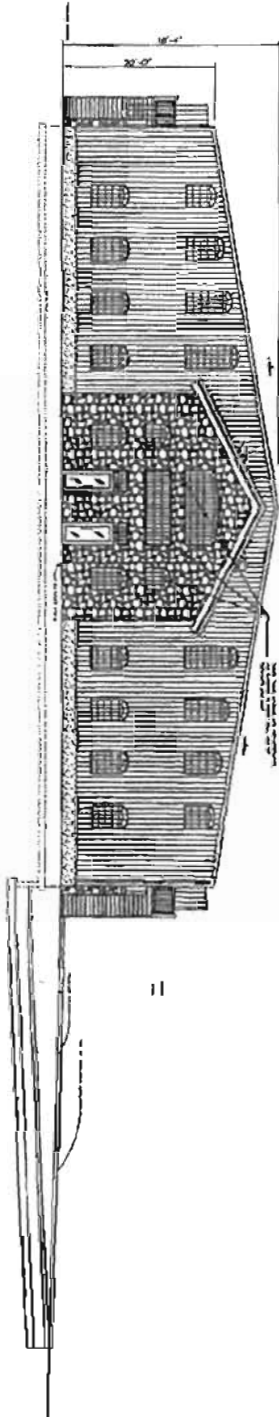
1083

Exhibit No. 7
Date: 04/25/07
T. Waters
T&T REPORTING

^a The effect of CO₂ concentration is given with the 20% N₂O and 80% CO₂ mixture as a reference. The effect of CO₂ concentration on the CO₂ K₁₅ is also given.

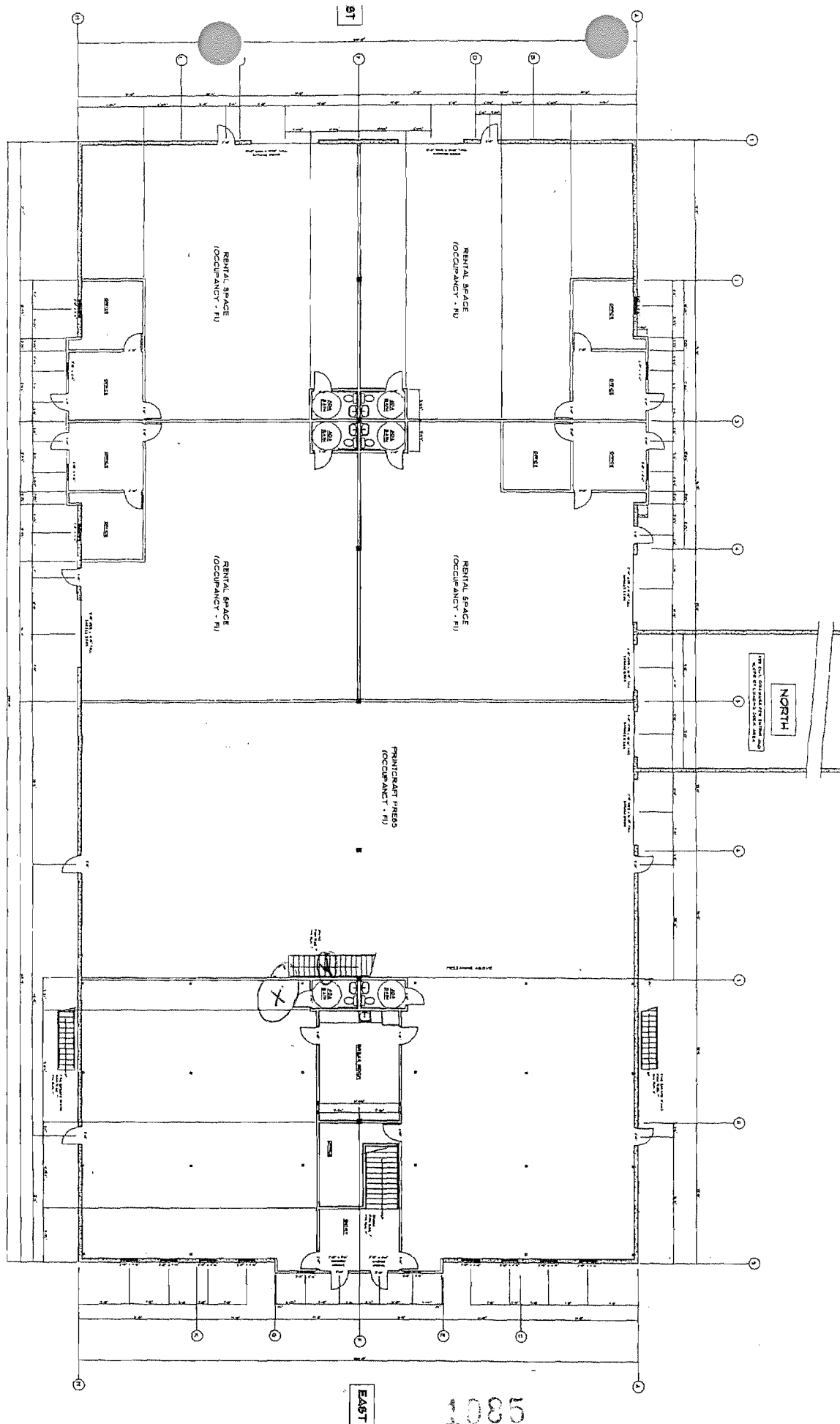
1. Need Railroads
2. Need Phone Tiers

Q's call TIAA 117-5544

SOUTH ELEVATION
 50° 14' 00"

EAST ELEVATION
V.B. 1.0°

4384



Michael D. Gaffney, ISB No. 3558
Lance J. Schuster, ISB No. 5404
Jeffrey D. Brunson, ISB No. 6996
John M. Avondet, ISB No. 7438
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495
Telephone: (208) 523-5171
Facsimile: (208) 529-9732

Attorney for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation,

Plaintiff,

vs.

SUNNYSIDE UTILITIES, INC., an Idaho
corporation

Defendant.

Case No.: CV-06-7097

PLAINTIFF'S RESPONSES TO
DEFENDANT'S FIRST AND SECOND
SETS OF INTERROGATORIES,
REQUESTS FOR PRODUCTION AND
REQUESTS FOR ADMISSION

Plaintiff, Printcraft Press, Inc., by and through counsel of record, hereby responds to Defendant's First and Second Sets of Interrogatories, Requests for Production and Requests for Admission as follows. As a preliminary matter the plaintiff objects on the basis that this is not the first and second sets of discovery. As the defendants all have retained the same counsel they should not be permitted to each submit separate discovery requests asking at times identical questions. Such discovery is abusive to the plaintiff

1086

EXHIBIT B

until the system was disconnected in December of 2006.

REQUEST FOR ADMISSION NO. 57: Please admit that Printcraft Press received sewer services, other than for “processed waste,” from Sunnyside Park Utilities for the month of November 2006.

RESPONSE: Deny. The plaintiff does not know what the defendant is classifying as “processed waste” and therefore deny. The defendant put limits on the plaintiff’s use of the sewer system beginning in June of 2006. Such limitations continued until the system was disconnected in December of 2006.

REQUEST FOR ADMISSION NO. 58: Please admit that Printcraft Press received sewer services, other than for “processed waste,” from Sunnyside Park Utilities from December 1, 2006 through December 15, 2006.

RESPONSE: Deny. The plaintiff does not know what the defendant is classifying as “processed waste” and therefore deny. The defendant put limits on the plaintiff’s use of the sewer system beginning in June of 2006. Such limitations continued until the system was disconnected in December of 2006.

REQUEST FOR ADMISSION NO. 59: Please admit that Printcraft Press never asked Sunnyside Park Utilities to identify what type of sewer system Sunnyside Park Utilities operated.

RESPONSE: Deny. In June of 2006 Doyle Beck told Travis Waters what kind of system was being operated by the defendants.

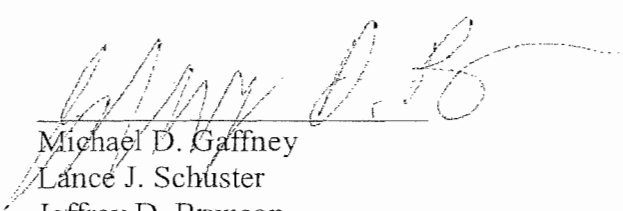
REQUEST FOR ADMISSION NO. 60: Please admit that Printcraft Press never asked Sunnyside Park Utilities to identify the capacity of Sunnyside Park Utilities’ sewer system.

RESPONSE: In June of 2006 Doyle Beck told Travis Waters the capacity of the sewer system.

REQUEST FOR ADMISSION NO. 61: Please admit that Printcraft Press never asked Sunnyside Park Utilities about any restrictions on Sunnyside Park Utilities' sewer system.

RESPONSE: Plaintiff objects to this request as it is unintelligible and plaintiff does not understand what the reference to "restrictions" refers to. Plaintiff therefore denies the request for admission.

DATED: October 26, 2007.



Michael D. Gaffney
Lance J. Schuster
Jeffrey D. Brunson
John M. Avondet
Beard St. Clair Gaffney PA
Attorney for Plaintiff

City Of Idaho Falls

Septage Hauler Chain Of Custody

Septage Company Pride Air Express Inc
Address 8105 Pancheri Dr.
City Idaho Falls
State, Zip Code IDAHO 83402
Company Phone (208) 522-3940
Company Driver DAVID WATER
Truck Number 1

Origin Of Load: Each Origin must be listed.
Use separate sheet for each customer.

Date Loaded _____
Customer Print Craft Press
Address 3834 South Professional Way
City Idaho Falls
State, Zip Code Idaho 83402
Customer Phone (208) 523-4122
County Bonneville
Type of Waste: Domestic
(I.E., Domestic Septic Tank, Portable Toilet, Etc.)

Date Delivered at WWTP Sept 4 07
Time Delivered at WWTP 10:00 AM. P.M.

Driver's Signature



CITY OF IDAHO FALLS
INDUSTRIAL PRETREATMENT PROGRAM

INDUSTRIAL WASTEWATER ACCEPTANCE (IWA)

EFFECTIVE DATE: January 1, 2007
EXPIRATION DATE: JANUARY 1, 2008

GENERAL INFORMATION

INDUSTRIAL USER: SEPTAGE HAULER

PERMIT NUMBER #IF-7699-562991-25

1. COMPANY NAME: Pride Air Express
2. DIVISION NAME: Pride Air Express
3. MAILING ADDRESS: 865 Pancheri
IDAHO FALLS, IDAHO 83402
4. FACILITY ADDRESS: 865 Pancheri
IDAHO FALLS, IDAHO 83402
5. OFFICIAL: Lawry Wilde
6. TELEPHONE NUMBER: (208) 522-7742

APPROVED BY: David C. Smith DATE: 6-21-07
DAVID C. SMITH / SEWER SUPERINTENDENT
CITY OF IDAHO FALLS
P.O. BOX 50220
IDAHO FALLS, ID 83405
(208) 612-8108

The above Industrial User is authorized to discharge industrial wastewater to the City of Idaho Falls sewer system in compliance with the City of Idaho Falls Ordinance Sec. 8, Ch. 1 in accordance with, effluent limitations, monitoring requirements, and other conditions set forth herein. This Acceptance Form may be modified at the discretion of the City so as to bring it into compliance with Federal and Local regulations. The Industrial User shall comply with the effluent concentrations specified.

EFFLUENT CONCENTRATIONS & LOADING LIMITS

LOCAL LIMITS: The following pollutant limits are established to protect against pass through and interference. No person shall discharge wastewater containing in excess of the following daily maximum allowable discharge limits.

pH LIMIT AT ALL TIMES 5.0 - 9.0

PARAMETER	DAILY MAXIMUM
ARSENIC	0.04 mg/L
CADMIUM	0.26 mg/L
CHROMIUM (total)	2.77 mg/L
COPPER	1.93 mg/L
CYANIDE	1.04 mg/L
LEAD	0.29 mg/L
MERCURY	0.002 mg/L
NICKEL	2.38 mg/L
OIL & GREASE (petroleum or mineral oil products)	100.00 mg/L
OIL & GREASE (animal and vegetable-based)	250.00 mg/L
SILVER	0.43 mg/L
ZINC	0.90 mg/L

All metals shall be reported as total

The above limits apply at the point where the wastewater is discharged to the POTW (end of pipe). All concentrations for metallic substances are for "total" metal unless indicated otherwise. The Director may impose mass limitations in addition to, or in place of, the concentration-based limitations above. Where a User is subject to a categorical pretreatment standard and the local limit for a given pollutant, the more stringent limit or applicable pretreatment standard shall apply.

POTW's may develop Best Management Practices to implement paragraphs as listed in 40 CFR 403.5(c)(1) and (c)(2). Such BMPs shall be considered local limits and Pretreatment Standards for the purpose of this part and section 307(d) of the act.

ANALYTICAL REQUIREMENTS:

1. All pollutant analyses, including sampling techniques, shall be performed in accordance with the techniques prescribed in 40 CFR Part 136, unless otherwise specified in an applicable categorical pretreatment standard. If 40 CFR Part 136 does not contain sampling or analytical techniques for the pollutant in question, sampling and analyses must be performed in accordance with procedures approved by the EPA.

MONITORING REQUIREMENTS:

PARAMETER SAMPLE	UNIT OF MEASUREMENT	SAMPLING FREQUENCY	TYPE
---------------------	---------------------	--------------------	------

City may sample any load, and by the City WWTP at their discretion.

POINT OF DISCHARGE:

LOCATION

Idaho Falls Wastewater Treatment Plant

AUTHORIZED PRODUCTS MANUFACTURED OR SERVICES PROVIDED:

Product Produced/Service Provided	SIC Code	NAICS
Septage Haulers	7699	562991

SPECIAL CONDITIONS & COMPLIANCE SCHEDULES:

- A. In accordance with Section 8 Chapter 1 of the City of Idaho Falls Sewer Ordinance, the City must be notified 30 days prior to changing any of the discharge characteristics as allowed in this IWA.

- B. The IWA and right to discharge may be revoked at any time after inspection, monitoring, sampling or other analyses determines that the Septage Hauler is in violation of Federal, State or Local laws, including the City of Idaho Falls Sewer Use Ordinance or for protection of the processes and equipment at the Wastewater Treatment Facilities.
- C. Service station and garage pit waste will not be accepted.
- D. Any waste containing dry cleaning chemicals will not be accepted.
- E. Domestic sewage is the only septage which will be accepted.
- F. Septage Hauler is required to report to Wastewater Treatment Plant personnel prior to dumping.

PROHIBITED DISCHARGE STANDARDS

- (A) General Prohibitions: No User shall introduce or cause to be introduced into the POTW any pollutant or wastewater which causes pass-through or interference. These general prohibitions apply to all Users of the POTW whether or not they are subject to categorical pretreatment standards or any other national, state or local pretreatment standards or requirements.
- (B) Specific Prohibitions: No user shall introduce or cause to be introduced into the POTW the following pollutants, substances or wastewater:
 - (1) Pollutants which create a fire or explosive hazard in the POTW, including, but not limited to, wastestreams with a closed-cup flashpoint of less than 140°F (60°C) using the test methods specified in 40 CFR 261.21;

- (2) Wastewater having a pH less than 5.0 or more than 9.0, or otherwise causing corrosive structural damage to the POTW or equipment in the WWTP;
- (3) Solid or viscous substances in amounts which will cause obstruction of the flow in the POTW resulting in interference, but in no case solids greater than one-half inch (1/2") in any dimension;
- (4) Pollutants, including oxygen-demanding pollutants released in a discharge at a flow rate and/or pollutant concentration which, either singly or by interaction with other pollutants, will cause interference with the POTW;
- (5) Wastewater having a temperature which will inhibit biological activity in the WWTP resulting in interference, but in no case wastewater which causes the temperature at the introduction into the WWTP plant to exceed 104°F (40°C) unless the Director, approves alternate temperature limits in writing;
- (6) Petroleum oil, non-biodegradable cutting oil, or products of mineral oil origin, in amounts that will cause interference or pass through;
- (7) Pollutants which result in the presence of toxic gases, vapors, or fumes within the POTW in a quality that may cause acute worker health and safety problems;
- (8) Trucked or hauled pollutants, except at discharge points designated by the City;
- (9) Noxious or malodorous liquids, gases, solids, or other wastewater which either singly or by interaction with other wastes, are sufficient to create a public nuisance or a hazard to life or health, or to prevent entry into the sewers for maintenance or repair;

- (10) Wastewater which imparts color which cannot be removed by the treatment process, such as, but not limited to, dye wastes and vegetable tanning solutions, which consequently imparts color to the treatment plant's effluent, thereby violating the City's NPDES permit. Color in combination with turbidity shall not cause the treatment plant effluent to reduce the depth of the compensation point for photosynthetic activity by more than ten percent (10%) from the seasonably established norm for aquatic life;
- (11) Wastewater containing any radioactive wastes or isotopes except as specifically approved in writing by the Director in compliance with applicable State or Federal regulations;
- (12) Storm water, surface water, ground water, artesian well water, roof runoff, subsurface drainage, swimming pool drainage, condensate deionized water, non-contact cooling water, and unpolluted wastewater, unless specifically authorized by the Director.
- (13) Any sludges, screenings, or other residues from the pretreatment of industrial wastes or from industrial processes;
- (14) Medical wastes, except as specifically authorized by the Director;
- (15) Wastewater causing, along in conjunction with other sources, the WWTP's effluent to fail a toxicity test;
- (16) Detergents, surface-active agents, or other substances which may cause excessive foaming in the POTW;
- (17) Any liquid, solids, or gases which by reason of their nature or quantity are, or may be, sufficient either alone or by interaction with other substances to cause fire or explosion or be injurious in any other way to the POTW or to the operation of the POTW. At no time shall two (2) successive readings on an explosion meter, at the point of discharge into the system (or at any point in the system),

be more than five percent (5%) nor any single reading over ten percent (10%) of the lower explosive limit (LEL) of the meter.

- (18) Grease, garbage other than ground garbage, animal guts or tissues, paunch manure, bones, hair, hides or fleshings, entrails, whole blood, feathers, ashes, cinders, sand, spent lime, stone or marble dusts, metal, glass, straw, shavings, grass clippings, rags, spent grains, spent hops, waste paper, wood, plastics, gas, tar asphalt residues, residues from refining or processing of fuel or lubricating oil, mud, or glass grinding or polishing wastes.
- (19) Any substance which will cause the POTW to violate its NPDES and/or other disposal system permits.
- (20) Any wastewater, which in the opinion of the Director can cause harm either to the sewers, WWTP or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property or constitute a nuisance, unless allowed under special agreement approved in writing by the Director, except that no special waiver shall be given from categorical pretreatment standards.
- (21) The contents of any tank or other vessel owned or used by any person in the business of collecting or pumping sewage, effluent, septic tank waster, or other wastewater unless said person has first obtained testing and approval as may be generally required by the City and paid all fees assessed for the privilege of said discharge.
- (22) Any hazardous wastes as prohibited or regulated by the State of Idaho or in 40 CFR part 261.
- (23) Persistent pesticides and/or pesticides regulated by the Federal Insecticide Fungicide Rodenticide Act (FIFRA).
- (24) Sewage sludge, except in accordance with the City's NPDES permit, providing that it specifically allows the discharge to surface waters of sewage sludge pollutants.

Pollutants, substances or wastewater prohibited by this section shall not be processed or stored in such a manner that they could be discharged to the POTW. (Ord. 2223, 1-9-97)

WASTEWATER DISCHARGE PERMIT TRANSFER:

Wastewater discharge permits may be reassigned or transferred to a new owner or operator only if the permittee gives at least thirty (30) days' advance notice to the Director and the Director approves the wastewater discharge permit transfer. The notice must include a written certification by the new owner or operator which:

- (A) States that the new owner or operator has no immediate intent to change the facility's operations and processes;
- (B) Identifies the specific date on which the transfer is to occur;
- (C) Assumes full responsibility for complying with the existing wastewater discharge permit beginning on the date the transfer is to occur.

Failure to provide advance notice of a transfer renders the wastewater discharge permit voidable as of the date of facility transfer. (Ord. 2223, 1-9-97)

WASTEWATER DISCHARGE PERMIT MODIFICATION:

The Director may modify the wastewater discharge permit for good cause including, but not limited to, the following:

- A To incorporate any new or revised Federal, State or local pretreatment standards or requirements;

- B To address significant alterations or additions to the User's operation, processes or wastewater volume or character since the time of wastewater discharge permit issuance;
- C A change in the POTW that requires either a temporary or permanent reduction or elimination of the authorized discharge;
- D Information indicating that the permitted discharge poses a threat to the City's POTW, City personnel or receiving waters;
- E Violation of any terms or conditions of the wastewater discharge permit;
- F Misrepresentation or failure to fully disclose all relevant facts in the wastewater discharge permit application or in any required report;
- G Revision of or a grant of variance from categorical pretreatment standards pursuant to 40 CFR 403.13;
- H To correct typographical or other errors in the wastewater discharge permit;
- I To reflect a transfer of the facility ownership or operation to a new owner or operator, provided however modification for this purpose may not be allowed unless the wastewater discharge permit is transferable as provided in section 8-1-44 of the Sewer Use Ordinance. (Ord. 2223, 1-9-97)

STANDARD CONDITIONS:

- A. The User shall comply with all the general conditions and prohibitive discharge standards as set forth in the City of Idaho Falls Sewer Use Ordinance.
- B. ANY person who, knowingly makes any false statement on any report or other required document, renders any monitoring device or method inaccurate, or otherwise violates provisions of the City Sewer Use Ordinance, and EPA's pretreatment regulatory requirements shall be liable to enforcement in accordance with the City of Idaho Falls Sewer Use Ordinance.

- C. The User is subject to fines, enforcement action, surcharges and other costs resulting from their discharge in excess of those specified in this document, the City of Idaho Falls Sewer Ordinance or other agreements.
- D. Except for information deemed confidential under the City of Idaho Falls Sewer Ordinance, all reports required by this agreement shall be available for public inspection.
- E. A minimum of sixty (60) days prior to the expiration of this permit, the User shall submit an application for a new permit by completing a wastewater discharge permit application.
- F. Sampling costs incurred by the City may be charged to the User.

NOTE: Effluent concentrations and loading limits may be modified prior to expiration of this permit.



STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL
LAWRENCE G. WASDEN

April 11, 2008

Via Facsimile and US Mail

Mr. Jeffery D. Brunson and Mr. John Avondet
2105 Coronado Street
Idaho Falls, ID 83404
Facsimile Number: (208)529-9732

Re: Printcraft Press and Discharge of Saltwater Brine

Dear Mr. Brunson and Mr. Avondet,

I am writing regarding our meeting on April 1, 2008, in which you requested a statement from my client DEQ regarding 1) whether your client Printcraft Press can discharge saltwater brine from its facility, into the storage tanks located on the property, and 2) whether DEQ or the ELPHD regulates the discharge under the MOU and IDAPA rules.

According to IDAPA 58.01.03.004.01 and 03 (Individual /Subsurface Sewage Disposal Rules), a facility cannot discharge industrial wastes such as saltwater brine into "individual and subsurface sewage systems," unless that discharge is approved by the director. However, based on the information received by DEQ, the storage tanks located on Printcraft's property do not meet the definition of either an individual system or subsurface sewage system and therefore the Individual/Subsurface Sewage Disposal Rules would not apply. As long as Printcraft continues to properly haul, store, and dispose of the industrial wastes produced by its operation, it will not be subject to enforcement by DEQ for discharging saltwater brine from its facility.

However, please note that should Printcraft install a subsurface sewage system, Printcraft will become subject to the Individual and Subsurface Disposal Rules, and cannot discharge saltwater brine, or other industrial wastes into a subsurface sewage system. Also, should Printcraft access and connect to the City of Idaho Falls system, it will become subject to IDAPA 58.01.16 and 58.01 17.

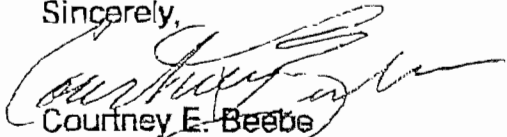
1100

EXHIBIT E

Mr. Jeffery D. Brunson and Mr. John Avondet
April 11, 2008
Page 2 of 2

Thank you for your patience, my litigation schedule has kept me from being able to more timely address your question. Please let me know if you have any questions or concerns.

Sincerely,



Courtney E. Beebe
Deputy Attorney General

cc: James Johnston, Regional Administrator, IFRO
Willie Teuscher, Engineer, IFRO
Rick Huddleston, Waste Water Program Manger, DEQ State Office
Barry Burnell, Water Quality Administrator, DEQ State Office
Gregory Crockett, Attorney for EIPHD, (208) 523-4474

David M. Smith
Idaho State Accountancy Board #1345
SMITH AND COMPANY CPAs, PLLC
310 Elm Street
Idaho Falls, ID 83402
Telephone: (208) 524-2601
Facsimile: (208) 522-0502

Expert Witness for the Plaintiff, Printcraft Press, Inc.

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINCRAFT PRESS INC., an Idaho)
Corporation,)
)
Plaintiff,)

vs.)

SUNNYSIDE PARK UTILITIES, INC. an)
Idaho Corporation, SUNNYSIDE PARK)
OWNERS ASSOCIATION, an Idaho)
corporation, and SUNNYSIDE)
INDUSTRIAL AND PROFESSIONAL)
PARK LLC, an Idaho limited liability)
corporation,)
)
Defendants.)

CASE NO. CV-06-7097

**Disclosure of
Expert Witness Opinions
David M. Smith CPA/ABV, CVA,
CMEA, CFFA**

Under the second remedy, Relocate the Business, the Plaintiff suffered, or will suffer, the following damages:

1. Estimated cost of relocating.
2. Cost incurred for temporary sewage storage and transportation.
3. Cost incurred obtaining water.
4. Reduced profit from lost employee time.

The second remedy is problematic. The determination of what building would represent suitable replacement property is subjective and open to debate between the parties. Therefore, this remedy, even if less costly than connecting to the City of Idaho Falls utilities, may cost more in the long run due to extended litigation over acceptable replacement property, remodeling costs, decorating costs, too high or too low rent, etc.

The following is a summary of the opinions I expect to give at trial or deposition. Attached are the opinions, basis for the opinions, and Curriculum Vitae of David M. Smith, CPA/ABV, CVA, CMEA, CFFA.

OPINIONS

Opinion #1 – DAMAGES SUFFERED IF PRINTCRAFT PRESS, INC. CONNECTS TO THE CITY OF IDAHO FALLS.

Printcraft suffered loss (damages) due to the alleged actions of the Defendant (disconnecting sewer and water) in an amount between \$419,247.09 and 522,868.87 (including interest). This amount represents the expected cost to connect to the City of Idaho Falls utilities and reimburse costs incurred.

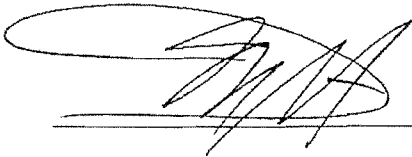
Opinion #2 – DAMAGES SUFFERED IF PRINTCRAFT PRESS, INC. RELOCATES

Printcraft suffered loss (damages) due to the alleged actions of the Defendant (disconnecting sewer and water) in the amount of \$457,746.64 (including interest). This amount represents the expected cost to relocate the business and reimburse costs incurred.

Opinion #3 – DAMAGES SUFFERED IN LOSS OF VALUE OF PREMISES

The owner of the premises will suffer a decrease in value of the real estate if Printcraft Press, Inc. relocates to another location, leaving the building empty without sewer service. The owner will undoubtedly proceed against Printcraft Press, Inc. for the decrease in value, which Printcraft Press will in proceed against the Defendant for the damages caused by the actions of the Defendant.

The damages claimed by the Plaintiff have been calculated to a reasonable degree of certainty based on the information available at this time, and depend upon the remedy sought and/or options available.

A handwritten signature in black ink, appearing to read 'D. Smith', is written over a horizontal line.

David M. Smith CPA/ABV, CVA, CMEA, CFFA

April 11, 2008

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BONNEVILLE

PRINTCRAFT PRESS, INC., an Idaho)
corporation,)

Plaintiff,)

vs.)

Case No. CV-06-7097

SUNNYSIDE PARK UTILITIES, INC.,)
an Idaho corporation,)

Defendant.)

COPY

30(B)(6) DEPOSITION OF SUNNYSIDE PARK UTILITIES, INC.

TESTIMONY OF DOYLE H. BECK

May 30, 2007

REPORTED BY:

DANIEL E. WILLIAMS, CSR No. 686, RPR

EXHIBIT G

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1 and dump is what put us in isolation and caused
2 our failure.

3 Q. Okay. And let's be specific about
4 that, Mr. Beck. What day was that? When did
5 that occur?

6 A. Well, we don't know. I mean, when they
7 started business, they represented to us that
8 they had 30 employees for sanitary sewer purposes
9 only.

10 Q. Okay. And who made that
11 representation?

12 A. Travis Waters did.

13 Q. Was it made -- was that representation
14 made in response to a request or a statement from
15 you?

16 A. That was made at the time of the CC&R
17 drawing interview. I asked him what their uses
18 and needs was going to be for sewer, and he told
19 me 30 employees for sanitary purposes only.

20 Q. I want to make sure that I understand
21 that too. Is that how it was phrased, "What are
22 your sewer services needs going to be?"

23 A. I said, "What are your needs for sewer
24 service going to be?"

25 Q. Okay.

1 A. And he said, "We should have 30
2 employees, and that's all we'll need it for."

3 Q. You never asked him how many employees
4 that he had; he volunteered that to you?

5 A. Yes. He said he would need services
6 for 30 employees.

7 Q. Did you make any other inquiries other
8 than that time?

9 A. Well, my inquiry was -- he said he
10 needed it for 30 employees, and my inquiry was,
11 "For sanitary purposes only?" And he said,
12 "Yes."

13 Q. Okay. It's your position that you were
14 very specific about what that term "sanitary
15 purposes only" was?

16 A. Sanitary purposes for those 30
17 employees, yes.

18 Q. Do you recall approximately when this
19 happened, this conversation that you're talking
20 about?

21 A. No.

22 Q. Did you know what type of business
23 Mr. Waters operated?

24 A. Yes. I knew that he printed.

25 Q. Did you ask him any specific questions

1 about his business?

2 A. No.

3 Q. Why not?

4 A. Well, because he answered my questions.
5 What more could I ask him?

6 Q. It seems to me that there's quite a few
7 questions that you might be able to ask him. But
8 it's your opinion or your testimony that you
9 didn't ask him anything further?

10 A. Once he satisfied my concerns that his
11 purposes was for his employees or for sanitary
12 reasons, there's no more questions to ask. What
13 more could I ask other than the needs for the
14 people?

15 Q. Did you inquire about the processes
16 that he used in his business?

17 A. I didn't know that he had any
18 processes.

19 Q. But as you sit here today, you did know
20 what business he operated. You knew it was
21 Printcraft Press business?

22 A. That's correct. But I also know that
23 Anheuser-Busch processes barley, but unless they
24 tell me, I don't know that they're going to be
25 putting a million gallons a day into a sewer

1 system.

2 Q. This failure that you mentioned in
3 paragraph No. 7 in this counterclaim, this
4 temporary failure, you state that it resulted in
5 an investigation by District Seven. Do you know
6 when this investigation began?

7 A. It began the day that we went into
8 their office and told them that we had a problem.

9 Q. Do you remember approximately what day
10 that was?

11 A. No.

12 Q. I know that some of the documentation
13 that we'll go through refers to it being in June
14 of 2006; does that sound accurate?

15 A. Yes.

16 Q. Do you -- well --

17 MR. FULLER: Counsel, the paragraph
18 you're referring specifically refers to June
19 2006.

20 MR. ERICKSON: Oh, yes, it does.
21 You're exactly right.

22 Q. (BY MR. ERICKSON) How was that
23 investigation started by the district? What did
24 they do?

25 A. I don't know what you mean.

1 understand exactly what you're say

2 Let me have you turn to the page that
3 has Bates No. 00688. Can you tell me what this
4 document is?

5 A. That is the supplies that BECO paid for
6 the drainfield expansion, to Clay Excavation, for
7 meter reading, and for my time.

8 Q. Let me have you refer again real
9 quickly to Exhibit No. 47.

0 MR. FULLER: Can you identify that,
1 Counsel?

2 MR. ERICKSON: It is a letter dated
3 June 28, 2006, from District Seven to Kirk Woolf.

4 THE WITNESS: Okay.

5 Q. (BY MR. ERICKSON) In Exhibit No. 47, I
6 note on the first paragraph that it says --
7 Ms. Eager wrote this letter, and it says that
8 June 9, 2006, Doyle Beck and you -- I'm assuming
9 she's referring to Kirk Woolf -- announced to her
10 that the subsurface disposal system failed, is
11 that accurate? Do you believe that that occurred
12 on that date?

13 A. I believe so.

14 Q. Now, the invoice that I'm looking at
15 here says 6-06. Is that just for June '06?

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1 A. That's the order date.

2 Q. Okay, date of order. So that would be
3 the date that these items were ordered?

4 A. Yeah.

5 Q. Do you know specifically what date that
6 was in June?

7 A. No. I just put down the month.

8 Q. Was it in relationship to the failure
9 that was identified in that exhibit we just
10 looked at?

11 A. Yes.

12 Q. Now, you mentioned that it had a
13 listing for yourself, Doyle Beck. It appears to
14 be a 64.5. The type is kind of hard to read.
15 But is that accurate?

16 A. Yes.

17 Q. Is that the number of hours?

18 A. Yes.

19 Q. And then there's an "at" sign, \$60, it
20 appears to be?

21 A. Yes.

22 Q. And could you itemize for me what that
23 is?

24 A. That's the time -- you've got to
25 realize we've done all of this for \$15 a month,

1 and we can't afford deal with lie, deny, and
2 dump for \$15 a month. So that's my time for
3 having to deal with it up to that point.

4 Q. Okay. When you say "up to that point,"
5 what do you mean by that?

6 A. This is my babysitting fee.

7 Q. Okay. The date order is June of 2006?

8 A. Uh-huh.

9 Q. I'm assuming that that's when this was
10 all filled out, or was it filled out a later
11 date?

12 A. It's filled out -- you look at the date
13 on the bottom of it.

14 Q. Okay. What is that date?

15 A. 12-30-06.

16 Q. Okay. So are you saying that it's from
17 June of '06 to December of '06?

18 A. From the beginning of babysitting to
19 the end of babysitting.

20 Q. Okay. And what you're quantifying as
21 babysitting is from the date of the failure
22 after?

23 A. Right. From the beginning of lie,
24 deny, dump until we cut him off.

25 Q. Okay. And you're allotting yourself 64

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1 and a half hours. Did you keep track of the time
2 that you spent?

3 A. I think I've got some notes on it that
4 is close.

5 Q. Time sheets, or what do you have that
6 supports that?

7 A. Just notes. I don't keep time sheets.

8 Q. It's your opinion that you have some
9 notes that would support this?

10 A. Yeah, the hours.

11 Q. And how did you derive at the rate of
12 \$60 an hour?

13 A. That's what I charge.

14 Q. For?

15 A. If I consult or work for someone, I
16 charge \$60 an hour.

17 Q. So it's just your regular going rate?

18 A. Uh-huh. If I had a law degree, I could
19 add 200 to that, couldn't I?

20 Q. I imagine that the drainfield
21 supplies -- that's just the actual components for
22 the drainfield?

23 A. Yeah. And I think there's probably an
24 invoice in here.

25 Q. Yeah. Where did you buy those items,

MARK R. FULLER (ISB No. 2698)
DANIEL R. BECK (ISB No. 7237)
FULLER & CARR
410 MEMORIAL DRIVE, SUITE 201
P.O. Box 50935
IDAHO FALLS, ID 83405-0935
TELEPHONE: (208) 524-5400

DISTRICT 7TH JUDICIAL COURT
BONNEVILLE COUNTY, IDAHO

2 PM-1 2:11

ATTORNEY FOR DEFENDANT SUNNYSIDE INDUSTRIAL AND PROFESSIONAL PARK, LLC, AND
SUNNYSIDE PARK UTILITIES, INC.

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO IN AND FOR
THE COUNTY OF BONNEVILLE**

PRINCRAFT PRESS, INC., an)	Case No. CV-06-7097
Idaho corporation,)	
)	
Plaintiff,)	SPU'S AND SIPP'S
v.)	RESPONSE TO PLAINTIFF'S MOTIONS
)	FOR RECONSIDERATION
SUNNYSIDE PARK UTILITIES,)	
INC., an Idaho corporation,)	
SUNNYSIDE PARK OWNERS)	
ASSOCIATION, INC., an Idaho)	
corporation, SUNNYSIDE)	
INDUSTRIAL AND PROFESSIONAL)	
PARK, LLC, an Idaho limited)	
liability corporation, DOYLE)	
BECK, an individual, and KIRK)	
WOOLF, an individual.)	
)	
Defendants.)	
)	
<hr/>	
SUNNYSIDE PARK UTILITIES,)	
INC., an Idaho corporation.)	
)	
Counterclaimant,)	
v.)	
)	
PRINCRAFT PRESS, INC., an)	
Idaho corporation, and TRAVIS)	
WATERS, an individual.)	
)	
Counter-defendants.)	
<hr/>	

SPU'S AND SIPP'S RESPONSE TO PLAINTIFF'S
MOTIONS FOR RECONSIDERATION - 1

Printcraft has filed a Motion for Reconsideration, under Rule 11(a)(2)(B), of the Court's August 31, 2007 Memorandum Decision and Order. In addition, Printcraft has filed a Motion for Reconsideration of the Court's April 23, 2008 Memorandum Decision and Order. Printcraft contends that the Court erred by its application of the law to the undisputed facts of this case. Sunnyside disagrees that the Court made any error in its application of the law in the two Memorandum Decisions and Orders. Sunnyside does believe however, that additional evidence, disclosed by Printcraft after the Court's August 31, 2007 order was entered, resolves a finding of fact which the Court previously found was in material dispute. Sunnyside agrees that the Court should reconsider the August 31, 2007 order, but believes that upon reconsideration, the Court should uphold the grant of summary judgment on the Breach of the Third Party Beneficiary Agreement, and should grant Summary Judgment to Sunnyside on Printcraft's Constructive Fraud causes of action. Sunnyside believes that upon reconsideration of the April 23, 2008 order, the Court should affirm that decision, as it was in accord with the law and the facts.

STANDARD ON RECONSIDERATION

Idaho Rule of Civil Procedure 11(a)(2)(B) authorizes motions for reconsideration. A Rule 11(a)(2)(B) request for reconsideration "*permits* a party to present new evidence...but does not *require* that the motion be accompanied by new evidence." *Johnson v. Lambros*, 143 Idaho 468, 472, 147 P.3d 100 (Ida.App. 2006). (Emphasis in Original). *Johnson v. Lambros*, refers to

several other decisions which seem to hold that a Court should grant a Motion for Reconsideration if (1) newly presented evidence alters the previous findings of fact; or (2) if the court concludes that there were errors of law or fact in the initial decision. *Id.* 471-473.

BREACH OF THIRD PARTY BENEFICIARY AGREEMENT

a. Material Breach of the Contract

Printcraft asserts that the Court erroneously granted summary judgment because "...whether Printcraft's discharge of water softener brine materially breached the terms of the Agreement is a jury question."¹ While generally issues regarding whether a breach of contract is material create an issue of fact, "[i]nterpreting contracts, determining a statute's meaning, and applying law to undisputed facts all constitute matters of law." *Fisk v. Royal Caribbean Cruises, LTD.*, 141 Idaho 290, 292, 108 P.3d 990 (2005). (Emphasis Added). There is still no dispute that "Printcraft discharged water softener brine, hazardous wastes, processed water and excessive flows of wastewater into the system in violation of IDAPA 58.01.03.004.03." See Memorandum Decision, dated August 31, 2007, pg. 5.

Printcraft cites to several cases which define a "material breach" of the contract. See Printcraft Memorandum in Support of Reconsideration, pg. 3 and 4. None of the cases involve a breach of contract which constituted illegal action by the breaching

¹ Printcraft ignores the fact that in addition to water softener brine the court also found, as an undisputed fact, that Printcraft discharged "...hazardous wastes, processed water and excessive flows of wastewater into the system in violation of IDAPA 58.01.03.004.03." See Memorandum Decision and Order, dated August 31, 2007, pg. 5.

party. *Id.* A material breach of contract is a breach which **touches the fundamental purpose** of the contract and defeats the object of the parties in entering into the contract. *Ervin Construction Co. v. Van Orden*, 125 Idaho 695, 699-700, 874 P.2d 506, 510-511 (1983). The Idaho Civil Jury Instructions require as an element of every enforceable contract: "A lawful purpose." IDJI 6.01.1. A fundamental purpose of every enforceable contract is that it complies with the law, otherwise the contract is void.

Refusal to provide a party with a recovery, when that party has acknowledged its illegal conduct has been upheld by Idaho Courts. *See Trees v. Kersey*, 138 Idaho 3, 12, 56 P.3d 765 (2002) *citing Nash v. Meyer*, 54 Idaho 283, 300, 31 P.3d 273 (1934) ("...rights based on violation of law **will never be enforced** by the courts and that when a transaction is shown to be illegal because of **contravention of a statute**, the court is justified in its refusal to uphold the transaction in any way." (Emphasis Added)). Furthermore the Court in *Nash v. Meyer*, stated:

No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. If from the plaintiffs' own stating, or otherwise, the cause of action appears to arise *ex turpa causa*, or the transgression of a positive law of this country, there **the court says he has no right to be assisted**. It is upon that ground that the court goes not for the sake of the defendant, but because they will not lend their aid to such a plaintiff.

54 Idaho 283, 300, 31 P.2d 273 (1934) (Emphasis Added). Because Printcraft undisputedly violated IDAPA 58.01.03.004.03, it is not entitled to acquire the assistance of the Court in recovering on its cause of action for breach of contract. Therefore, after reconsidering the evidence presented, and the laws applied by the

Court in its August 31, 2007 Memorandum Decision and Order, the Court should uphold the prior grant of Summary Judgment on Printcraft's cause of action for Breach of the Third Party Beneficiary Agreement.

Printcraft is correct that "the evidence does not suggest that discharging water softener brine was even within the realm of the parties' thinking." See Plaintiff's Memorandum pg. 6. Water softener brine was not in the "realm of the parties' thinking" because Travis Waters told Sunnyside "nothing" regarding what Printcraft intended to discharge into the septic system. See Deposition of Travis Waters, pg. 119, ln. 10-17. However, the fact that Waters never disclosed that Printcraft would discharge water softener brine does not make Printcraft's discharge any less illegal. "Ignorance of the law is not a defense." *State v. Fox*, 124 Idaho 924, 926, 866 P.2d 181, 183 (1993) (citing *Hale v. Morgan*, 22 Cal.3d 388, Cal.Rptr. 375, 380, 584 P.2d 512, 517 (1978)).

b. No issues of fact whether the Agreement or the Rules and Regulations were violated.

Printcraft's second argument asserts that "[i]n order to discharge water softener brine into a septic system it is the responsibility of the system's designer to acquire director approval from the Idaho Department of Environmental Quality (DEQ)." See Plaintiff's Memorandum, pg. 7. However, Printcraft does not cite to any IDAPA provision which requires that the system's designer (Benton Engineering in this case. See Second Amended Complaint, Exhibit A, pg. 8), obtain such approval or why

Benton Engineering's alleged failure is relevant. Instead IDAPA 58.01.03.002.04(a) states: "Every owner of real property is jointly and individually responsible for:...Obtaining necessary permits and approvals..." Under this provision, either Waters Land and Cattle or CTR Development, the property owners, were responsible for obtaining such approval when they contracted with Printcraft for Printcraft's occupancy of the building. See Deposition of Travis Waters, pg. 87, ln. 21 through pg. 88, ln. 5. Under IDAPA 58.01.03.002.04(b), Sunnyside would only be responsible if it explicitly agreed to accept water softener brine into its septic system because it is only responsible for "compliance with each of these rules that **are relevant to that service or product.**" (Emphasis Added). It is undisputed that Printcraft did not disclose that it intended to discharge water softener brine into the sewer system. See Deposition of Travis Waters, pg. 119, ln. 10-17. It is also undisputed that when Sunnyside learned of Printcraft's discharge of water softener brine it demanded that Printcraft cease violating IDAPA 58.01.03.004.03. See Letter of Mark Fuller, dated September 20, 2006, attached as Plaintiff's Response to Request for Admission, No. 6. Sunnyside did not have an obligation to acquire approval for discharge of water softener brine, instead, Printcraft had an obligation to ensure that water softener brine was not discharged.

By way of footnote Printcraft claims that Sunnyside has unclean hands resulting from Sunnyside's alleged violated IDAPA 58.01.03.004.04 once Sunnyside connected the third building to its septic system. See Plaintiff's Memorandum, pg. 8. Sunnyside

strongly disagrees that it violated this IDAPA provision. IDAPA 58.01.03.004.04 deals with "resulting flow or volume" it does not deal with "number of buildings." However, even assuming that this were a violation, Printcraft does not explain how it is relevant to the current Motion for Reconsideration. Sunnyside is not even pursuing any causes of action for breach of the Third Party Beneficiary Agreement, or breach of the 2005 Agreement between Sunnyside and CTR Development. Sunnyside's only breach of contract cause of action relates to the September, 2006 agreement formed after Sunnyside applied for and obtained the June 29, 2006 expansion permit, resolving the issues with the one or two buildings language in the 1996 permit. See June 29, 2006 permit, attached as Exhibit N to Plaintiff's Second Amended Complaint.

Based upon the arguments presented by Printcraft, there is no reason for the Court to overturn its previous decision granting summary judgment to Sunnyside on Printcraft's cause of action for Breach of the Third Party Beneficiary Agreement. Sunnyside respectfully requests that the Court uphold that portion of the Court's August 31, 2007, Memorandum Decision and Order.

BREACH OF CONTRACT ALLEGED BY SPU

Printcraft also seeks reconsideration of the Court's April 23, 2008 Memorandum Decision and Order, granting summary judgment to Sunnyside Park Utilities, on Count One of SPU's Counterclaim. Printcraft's sole basis for the Motion for Reconsideration of the April 23, 2008 Memorandum Decision, is that "the April 23, 2008 decision is based upon the August 31, 2007 decision and in the event that the August 31, 2007 decision is reconsidered, the April

23, 2008 decision should also be reconsidered." See Second Motion for Reconsideration, dated April 28, 2008, pg. 1-2. Printcraft Press already made the argument regarding "materiality" in its Memorandum in Opposition to Defendant's Fourth Motion for Summary Judgment, dated April 1, 2008, pgs. 11-16. Specifically, Printcraft argued "something as trivial as soft water brine, which is discharged by residences and businesses across the state, is not a material breach of the contract." *Id.* pg. 16. Sunnyside's argument is the same now as it was in response to Printcraft's earlier allegation:

Sunnyside Utilities does not agree that discharging water softener brine is a trivial matter, where such a discharge subjects Sunnyside Utilities and the owner of the building (J&LB Properties), each individually, to criminal penalties, including a misdemeanor charge and fines of \$10,000 per occurrence or \$1,000 per day for continuing violations, whichever is greater. See IDAPA 58.01.03.012.03. See also Idaho Code §39-117; See also IDAPA 58.01.03.002. The triviality of water softener brine is not something that can be decided by Printcraft, Printcraft's counsel, Printcraft's experts, or this Court. The legislature in its wisdom, has decided that the discharge of water softener brine into a septic system is illegal, unless specific authorization is obtained from the Director of the Department of Environmental Quality. See IDAPA 58.01.03.004.03.

See Reply to Plaintiff's Memorandum in Opposition to Motion for Summary Judgment RE: Sunnyside Utilities' Breach of Contract Cause of Action, dated April 8, 2008, pg. 17. Printcraft's argument becomes even more frivolous after one realizes that on April 11, 2008 Printcraft received specific instructions from the Idaho State Attorney General's office regarding IDAPA 58.01.03.004.01 and 58.01.03.004.03 stating "a facility cannot discharge industrial wastes such as saltwater brine into 'individual and subsurface sewage systems,' unless that discharge is approved by

the director." See Letter of Courtney Beebee, Office of the Attorney General, dated April 11, 2008, attached as Exhibit E, the Affidavit of Mark R. Fuller, dated May 1, 2008. The letter also stated: "...please note that should Printcraft install a subsurface sewage system, Printcraft will become subject to the individual and Subsurface Disposal Rules, and **cannot discharge saltwater brine, or other industrial wastes...**" *Id.* (Emphasis Added).

Based on the foregoing, the Court, after considering the evidence submitted by Printcraft, should uphold the April 23, 2008 decision to grant Summary Judgment to Sunnyside Park Utilities on its cause of action for Breach of Contract.

CONSTRUCTIVE FRAUD

Because Printcraft has requested reconsideration of the August 31, 2008 Memorandum Decision and Order, the Court should also reconsider whether additional evidence disclosed by Printcraft through discovery after the August 31, 2008 Memorandum Decision and Order was entered, resolves the disputed issues of fact which prevented summary judgment in Sunnyside's favor on Printcraft's causes of action for Constructive Fraud.

Based on the new evidence, Sunnyside is entitled to summary judgment on Printcraft's constructive fraud causes of action because Printcraft has not established a duty to disclose. The Court previously adopted the ruling from *Sowards v. Rathbun*, 134 Idaho 702, 707, 8 P.3d 1245, 1250 (2000), regarding a duty to disclose. See Memorandum Decision and Order, dated August 31, 2007. The Court in *Sowards* held:

A party may be under a duty to disclose: (1) if there is a

fiduciary or other similar relation of trust and confidence between the two parties; (2) in order to prevent a partial statement of the facts from being misleading; or (3) if a fact known by one party and not the other is so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it.

Sowards, 134 Idaho at 707, 8 P.3d at 1250. The Court determined that Printcraft had not established the existence of a fiduciary relationship. See Memorandum Decision and Order, dated August 31, 2007, pg. 14. There are no additional facts which would alter that determination. The Court also determined that Printcraft did not establish a partial statement which was misleading. *Id.* There are no additional facts which would alter that determination. The Court did conclude that there were material issues of fact regarding the third prong of *Sowards*. *Id.* However, since the Court's decision, Printcraft has admitted additional facts which resolve the factual issues in the third prong of *Sowards*.

The third prong of *Sowards*, requires a contract between two parties, and then creates a duty to disclose if one party to the transaction has information that the other party does not have. *Sowards, supra*. First the court must identify a contract between Printcraft and Sunnyside, then the Court must determine whether there is a material dispute as to what information was possessed by the respective parties at the time the contract was formed.

Printcraft has alleged a variety of contracts in this litigation, however, only the contract between SPU and Printcraft entered into in September of 2006 includes both Sunnyside and Printcraft as parties. The following contracts have been alleged by Printcraft:

1. A contract between SIPP and Miskin Scraper Works for sale of the property. See Second Amended Complaint, para. 24(A).
2. A contract between Miskin Scraper Works and Waters Land and Cattle for sale of the property. *Id.* para. 24(B).
3. A contract between Waters Land and Cattle and CTR Development for sale of the property. *Id.* para. 24(C).
4. A contract between Printcraft and either Waters Land and Cattle or CTR Development for Printcraft to occupy the building. See Deposition of Travis Waters, pg. 87, ln. 21 through pg. 88, ln. 5.
5. A contract between SPOA and SPU, to which Printcraft was an intended beneficiary, but not a contracting party. See Second Amended Complaint, para. 18.
6. A contract between CTR Development and Sunnyside, to which Printcraft was an intended beneficiary, but clearly not a contracting party. *Id.* para. 26.
7. A contract between J&LB Properties and CTR Management for lease of the building. *Id.* para. 27.
8. A contract between CTR Management and Printcraft for Printcraft to sub-lease part of the building. *Id.* para. 27.
9. A contract between Sunnyside and Printcraft to resolve discharge issues between the parties, formed in September, 2006 and memorialized by the Lane Erickson letter dated September 26, 2006. See Affidavit of Travis Waters, dated August 2, 2007, para. 40, and Exhibit T.

The only instance alleged by Printcraft where Sunnyside contracted directly with Printcraft occurred in September of 2006. This September, 2006 contract was the basis of the Court's denial of Sunnyside's Motion for Summary Judgment. See Memorandum Decision and Order on August 31, 2007. In the Disputed Material Facts section the Court assumed several facts for purposes of summary judgment:

Waters and Woolf met on September 25, 2006 to discuss issues relating to the system's failure. During the meeting, Printcraft showed Woolf the premises, specifically indicating

the substances it discharged into the system and the sources of the discharges. Woolf and Beck knew the nature of Printcraft's business and types of substances it would discharge into the system as a result of the blueprints Sunnyside Utilities had received previously.

See Memorandum Decision and Order, pg. 5-6.²

The relevant question for the Court, under *Sowards*, after identifying a contract, is whether there is a disputed issue of fact regarding what information the parties possessed when the contract was formed. Based upon the record in August 31, 2007, the Court determined that "Woolf and/or Beck understood the nature of the business and its need for a septic connection, but failed to disclose several deficiencies." See Memorandum Decision and Order, pg. 14. While Sunnyside disputes that Woolf and Beck understood the nature of the business and the types of substances it would discharge, Sunnyside concedes that there is an issue of material fact regarding what Woolf and Beck knew, based on the affidavit testimony of Travis Waters.

However, based upon the newly disclosed evidence there is no longer an issue of fact regarding what Printcraft knew. The Court found based on the record in August 31, 2007: "Waters further testified that he did not know the limitations of the septic system." *Id.* pg. 15. The Court does not identify specific paragraphs from Water's affidavit, however, there are several paragraphs, wherein Mr. Waters testified that Sunnyside did not disclose certain information prior to Printcraft's occupancy of the building. See Affidavit of Travis Waters, dated August 2,

² According to Plaintiff's Second Amended Complaint the September 25, 2006 meeting was between "the Defendants and the Plaintiff." See Second Amended Complaint, para. 45.

2007. Since the August 31, 2007 decision was entered, new admissions by Printcraft, establish that in September, 2006 **Printcraft knew the limitations of the septic system.**

On October 26, 2007 Printcraft served Sunnyside with Plaintiff's Responses to Defendants First and Second Sets of Interrogatories, Requests for Production and Requests for Admission. Printcraft's response to Request for Admission No. 59 states: "In June of 2006 Doyle Beck told Travis Waters what kind of system was being operated by the defendants." See Plaintiff's Admission, No. 59, attached as Exhibit B to the Affidavit of Mark R. Fuller, dated May 1, 2008. Printcraft's response to Request for Admission No. 60 states: "In June of 2006 Doyle Beck told Travis Waters the capacity of the sewer system." Furthermore, Printcraft acknowledges that on or about September 6, 2006 Sunnyside "put the Plaintiff on notice that their intention was only to accept human waste and not handle any other types of discharges into the sewer system." See Second Amended Complaint, para. 42. Printcraft also acknowledges that on or about September 20, 2006 Sunnyside provided Printcraft with a copy of the Third Party Beneficiary Agreement and the Sunnyside Utilities' Rules and Regulations. *Id.* para. 44. Travis Waters also acknowledged that he was aware that District Seven Health Department had concerns regarding the Sunnyside Utilities' system in July or August of 2006. See Deposition of Travis Waters, pg. 204, ln. 14 through pg. 205, ln. 2. Printcraft's attorney also acknowledged that Printcraft was aware of ongoing negotiations between DEQ and Sunnyside in his acceptance letter dated September 26, 2006. See Lane Erickson

letter, dated September 26, 2006, attached as Exhibit U to the Second Amended Complaint. There is simply no dispute that by September, 2006, when the contract was formed, Printcraft had at its disposal all of the evidence it claims Sunnyside should have disclosed. Sunnyside had no duty to disclose facts which Printcraft already knew.

Based on this new evidence, the Court should grant summary judgment in accordance with the case law set forth in the Court's August 31, 2007 Memorandum Decision and Order. Because it is undisputed that Printcraft had the same information that Sunnyside had, when the transaction was entered into, the third prong of *Sowards*, no longer creates a duty to disclose by Sunnyside. Because there are no disputed issues of fact regarding any of the three prongs of *Sowards*, and Sunnyside did not have a duty to disclose, Sunnyside is entitled to Summary Judgment on Printcraft's causes of action for constructive fraud. Sunnyside respectfully requests that the court reconsider its August 31, 2007 ruling and grant Summary Judgment in Sunnyside's favor.


CONCLUSION

Printcraft has requested that the Court reconsider the Memorandum Decisions and Orders entered on August 31, 2007 and April 23, 2008 pursuant to IRCP 11(a)(2)(B). The Court should re-evaluate those orders and determine if the decisions contained therein should be modified either as a result of (1) new evidence, or (2) errors of fact or law. Printcraft asserts that the Court should modify its rulings regarding Breaches of Contracts because "materiality" is a question of fact. However, Printcraft has

failed to establish any error, factually or legally, in the prior two decisions. Therefore, the Court should affirm the grants of summary judgment to Sunnyside on the Breach of Contract causes of action.

Sunnyside has presented new evidence, some of which was not available at the time the Court entered the August 31, 2007 Memorandum Decision and Order. The Court should consider that new evidence and revise its finding of fact that Printcraft "did not know the limitations of the septic system." The undisputed facts clearly show that Printcraft did know the limitations of the septic system prior to entering into the September, 2006 contract. There were no other contracts entered into between Sunnyside and Printcraft prior to that agreement, and therefore a duty to disclose, by Sunnyside, could not have arisen until September, 2006. Based on the new evidence, the Court should grant summary judgment to Sunnyside on Printcraft's remaining causes of action for Constructive Fraud.

DATED this 1 day of May, 2008.



Mark R. Fuller
Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the following described pleading or document on the attorneys listed below on this 1 day of May, 2008:

Document Served:

SPU'S AND SIPP'S RESPONSE TO
PLAINTIFF'S MOTIONS FOR
RECONSIDERATION

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**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE UTILITIES, INC., an Idaho
corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DISCOVERY
SANCTIONS

The plaintiff, Printcraft Press, Inc. (Printcraft) submits the following memorandum in opposition to defendant's motion for discovery sanctions. This memorandum is supported by the affidavits of Lance J. Schuster and Robert Starr.

INTRODUCTION

Printcraft has not violated a discovery order or trespassed on anyone's property. There is no legal or factual basis supporting sanctions against Printcraft. The present

motion is nothing more than a procedural ploy to prevent Printcraft from putting on its case and should not be entertained by this Court.

Sunnyside did not bring the present motion until after Kirk Woolf signed two criminal misdemeanor citations against Lance Schuster.¹ Counsel for Sunnyside is attempting to obtain advantage in a civil matter based on those criminal charges. Such conduct is expressly prohibited by the Idaho Rules of Professional Conduct which provides:

In representing a client, a lawyer shall not:

...

(3) present or participate in presenting criminal charges solely to obtain advantage in a civil matter; or

(4) threaten to present criminal charges in order to obtain advantage in a civil matter.

IRPC 4.4(a).² It would be a manifest abuse of discretion to support Sunnyside's machinations and exclude experts vital to Printcraft's case.

LEGAL STANDARD

The imposition of sanctions for discovery violations is committed to the discretion of the trial court. *Roe v. Doe*, 129 Idaho 663, 666, 931 P.2d 657, 660 (Ct. App. 1996). Courts should make the punishment fit the crime and should not impose a drastic sanction that will prevent adjudication of a case on its merits except on the clearest showing that the course is required. *S. Idaho Prod. Credit Ass'n v. Astorquia*, 113 Idaho 526, 532, 746 P.2d 985, 991 (1987) (Donaldson, J., concurring). Trial judges should

¹ No such charges were brought against Robert Starr.

² Predictably, counsel for Sunnyside will argue that they had nothing to do with the criminal charges. Notwithstanding, counsel is attempting to obtain advantage in a civil matter based on those charges. The personal attack on Lance Schuster is unwarranted, violates the ethics rules, and amounts to nothing more than an attempt to smear a highly respected member of the local bar. This Court should wisely use its discretion and not endorse such a ploy.

balance the equities by comparing the culpability of the disobedient party with the resulting prejudice to the innocent party in light of the twin aims of the sanction power. *Id.* Only after applying this balancing test, the Court should impose a sanction which will most substantially lead to the efficient administration of justice. *Id.*

Sanctions under Rule 37 are only appropriate when there is a standing discovery order. *See* IDAHO R. CIV. P. 37(b) (2007). The exclusion of witnesses is a severe sanction. *Roe*, 129 Idaho at 667, 931 P.2d at 661.

FACTS

1. On April 2, 2008, Lance Schuster met with Bob Starr in Idaho Falls, Idaho. Schuster and Starr decided to drive around Sunnyside Industrial Park and review the respective location of Printcraft Press, the septic field, and the sewer lines. Schuster Aff. ¶ 2; Starr Aff. ¶ 5.

2. Schuster parked his vehicle next to a vacant lot. Starr indicated he was interested in looking at the soils to corroborate what he knew about the soils from the documentation provided to him and the pictures he had seen. Schuster and Starr exited the vehicle and walked onto the vacant lot. Schuster Aff. ¶ 3; Starr Aff. ¶¶ 5-6.

3. There were no signs and no indication as to who owned the property. There were no “No Trespassing” signs located anywhere on the property or where Schuster and Starr entered the property. Schuster Aff. ¶ 4; Starr Aff. ¶ 6.

4. Schuster and Starr walked toward a gravel pit and Starr used his binoculars to look down into the gravel pit. Schuster Aff. ¶ 5; Starr Aff. ¶ 7.

5. While Schuster and Starr were standing at the edge of the gravel pit a man approached them from near where they parked. He asked who they were and Schuster so indicated. He identified himself as Russ. Schuster Aff. ¶ 6; Starr Aff. ¶ 8.

6. Russ asked what they were doing and Schuster told him that they were looking at the soils. He asked why they were looking at the soils and Schuster told him that Starr was a hydrologist and they were interested in the soils. Schuster then asked him if he was the owner of the property. Russ said that he worked for the owner. Schuster asked him if he would like them to leave. He said that he would like them to leave. They had been on the property less than five minutes. Schuster Aff. ¶ 7; Starr Aff. ¶ 8.

7. The entire time Russ was with them he was using a cell phone. Starr Aff. ¶ 8.

8. At no time did they see any "No Trespassing" signs, nor did Russ ask if they saw any signs. Schuster Aff. ¶ 4; Starr Aff. ¶ 9.

9. The following week, Schuster was served with two criminal misdemeanor citations for trespassing, a violation of Idaho Code § 18-7008. The Bonneville County Sheriff served the citations at Schuster's law office and indicated that the citations had been signed by Kirk Woolf. One citation is for trespassing on property owned by Sunnyside Industrial Park and the other is for property owned by Ideal Construction. Schuster Aff. ¶ 8.

10. After receiving the citations Schuster drove out to the Sunnyside Industrial Park to look for a "No Trespassing" sign. Schuster discovered that someone had posted a "No Trespassing" sign on the vacant lot just off of the road where Schuster had previously parked. The sign was not there on April 2, 2008 when Schuster and Starr had been on the property. There were no other signs indicating who owned the property or that entering upon the property was prohibited. Schuster Aff. ¶ 9.

11. Starr also returned to the public roadways in Sunnyside Industrial Park since April 2, 2008. Starr observed there is now a "No Trespassing" sign located next to where

Schuster's vehicle was parked. If the sign had been there on April 2, Schuster and Starr would have seen it and not entered the property. The signpost was not driven into the ground but propped up. Starr Aff. ¶ 10.

12. Whoever posted the property with the "No Trespassing" sign put it up after Starr and Schuster had been on the vacant lot. Schuster Aff. ¶ 10.

13. Schuster has practiced law in Idaho for twelve years and has served as a prosecutor for the City of Ririe for several years. Schuster is well aware of the law prohibiting entry upon land that is posted "No Trespassing." Schuster would not have entered upon this property if it was posted. Schuster Aff. ¶ 11.

14. There was no intent to trespass, to violate any laws of the State of Idaho or to violate the rules of discovery by driving around Sunnyside Industrial Park and walking onto a vacant lot. Schuster Aff. ¶ 12.

15. Starr's observations on April 2, 2008 did not change his opinions. Starr's opinions were already formed before April 2, 2008, and were based upon all the documentation, photographs, maps he examined, and observations he made of Printcraft Press before that date.

ARGUMENT

I. THERE WAS NO TRESPASS.

Printcraft, or its representatives, did not trespass. A fundamental problem with Sunnyside's motion is that it presupposes a trespass occurred. Sunnyside cites no legal authority whatsoever supporting its conclusory statement that a trespass occurred. Before this Court could even entertain granting Sunnyside's motion, Sunnyside bears the burden

of establishing that a trespass occurred.³ Idaho law plainly prevents a showing of trespass here. Idaho Codes § 18-7008 provides:

Every person who willfully commits any trespass, by . . .

. . .

9. Entering without permission of the owner or the owner's agent, upon the real property of another person which real property is posted with "No Trespassing" signs, is posted with a minimum of one hundred (100) square inches of fluorescent orange paint except that when metal fence posts are used, the entire post must be painted fluorescent orange, or other notices of like meaning, spaced at intervals of not less than one (1) sign, paint area or notice per six hundred sixty (660) feet along such real property; provided that where the geographical configuration of the real property is such that entry can reasonably be made at certain points of access, such property is posted sufficiently for all purposes of this section if said signs, paint or notices are posted at such points of access . . .

. . .

Is guilty of a misdemeanor.

Idaho Code Ann. § 18-7008.⁴

The elements of trespass are not met here. Lance Schuster and Robert Starr both testified that there was not a posted "No Trespassing" sign during the brief time they entered the property.⁵ Schuster Aff. ¶¶ 9-12; Starr Aff. ¶¶ 6-10. Instead, someone from Sunnyside likely propped the sign up after Schuster and Starr departed on the guise that it was there all along. Further, even if the sign was correctly posted, there is no evidence to suggest that it meets the specific requirements of Idaho Code § 18-7008 as to lettering and color. There is no evidence that Schuster and Starr willfully committed any trespass.

³ There's a question if Sunnyside even has standing to assert a trespass occurred since the alleged trespass did not even occur on its property.

⁴ See Idaho Code § 6-202 containing similar language for acts of civil trespass.

⁵ The Christensen Affidavit does not contradict this as it provides no detail on the sign and fails to indicate if the sign was visible and posted at the time Schuster and Starr were present. See Christensen Aff. ¶ 11.

Sunnyside has not met its burden establishing that a trespass occurred and its motion should be denied as a matter of course.

II. PRINTCRAFT DID NOT VIOLATE A DISCOVERY ORDER.

The defendants' motion should be denied because Printcraft has not violated any discovery orders from the Court. The absence of an order that has been violated or disobeyed is fatal to the defendants' motion for sanctions. *See In re: Williams*, 156 F.3d 86, 89 n.1 (1st Cir. 1998).⁶ In general, obtaining sanctions is a two-step process in which a party must first obtain an order compelling discovery under Rule 37(a) and then move for sanctions under Rule 37(b) for failure to comply with the order. Rule 37(b) does not provide a mechanism for the Court to sanction a party in the absence of an order governing discovery. The defendants' motion should be denied.

Sanctions under Rule 37(b) only apply to cases where there is a standing discovery order. *See IDAHO R. CIV. P. 37(b)* (2007). Rule 37(b)(2) provides in part:

If a party or an officer, director, or managing agent of a party or a person designated under Rule 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an order to provide or permit discovery, including an order made under subdivision (a) of this rule or Rule 35, the court in which the action is pending may make such orders in regard to the failure as are just. . . .

Id. Some balancing of the equities and some consideration of the efficacy of lesser sanctions must precede a trial court's imposition of a sanction which will significantly impair a party's ability to present its case on the merits at trial. *Roe v. Doe*, 129 Idaho 663, 667-68, 931 P.2d 657, 661-62 (Ct. App. 1996). The rule should be dispositive in this case.

⁶ For all intents and purposes the federal rule is nearly identical in purpose and language.

Here, the defendants have not filed a motion to compel the production of any information acquired by Printcraft as a result of the alleged trespass.⁷ The Court has not ordered Printcraft to produce any information obtained by the alleged trespass. Printcraft has not violated any discovery orders from the Court. Thus, the Court would significantly abuse its discretion if it excluded any let alone all of Printcraft's expert witnesses because it would not properly be applying the law. *See Robertson v. Richards*, 115 Idaho 628, 655, 769 P.2d 505, 532 (1989) (stating that a misconception of the law constitutes an abuse of discretion). Since Printcraft has not violated or disobeyed any orders of this Court, the defendants' motion must be denied.

III. THERE IS NO PREJUDICE TO SUNNYSIDE.

The underlying purpose for the rules of discovery is to prevent prejudice to the parties involved in the litigation. Here, there is no prejudice to Sunnyside and Sunnyside never explains to the Court how it is prejudiced by the alleged trespass. This omission from Sunnyside belies its true intent to resolve this case on a procedural technicality rather than on its merits.

Idaho law is clear that absent prejudice sanctions are not justified. In *Devault v. Stephen L. Herndon*, 107 Idaho 1, 684 P.2d 978 (1984), the trial court had issued an order compelling the production of documents by a specific deadline. *Id.* at 2, 684 P.2d at 979. The party ordered to produce the documents failed to comply with the Court's order. *Id.* In *Devault*, the Court noted that the sanctions under Rule 37 were intended to punish misconduct and deter others involved in litigation to prevent abuse in connection with discovery, and that a determination of whether a party's actions were of sufficient bad

⁷ This is likely because the defendants recognize that any such information would have been nominal and superfluous to Mr. Starr's ultimate opinions. In fact, the defendants are fully aware that their motion is merely a hyper-technical pretext to avoid trying their case on the merits of the action.

faith to justify dismissal is within the discretion of the trial court. *Id.* (citing *Nat'l Hockey League v. Metro. Hockey Club, Inc.*, 427 U.S. 639 (1976)). The trial court dismissed Devault's action with prejudice as a sanction for his noncompliance with the trial court's discovery order. This was within the trial court's discretion because it would have been patently unfair for the other party to litigate without ever seeing the documents Devault refused to produce.

Idaho law also provides that the trial judge should balance the equities by comparing the culpability of the disobedient party with the resulting prejudice to the innocent party in light of the twin aims of the sanction power. *Roe v. Doe*, 129 Idaho 663, 667, 931 P.2d 657, 661 (Ct. App. 1996).⁸ The trial court should only seek to impose a sanction that will lead to the efficient administration of justice. *Id.* Excluding witnesses and evidence is a *severe* sanction. *Id.* (emphasis added).

In this case, the incident occurred on April 2, 2008. Starr Aff. ¶ 5. However, the parties disclosed their respective experts on April 11, 2008. Thus, any information gleaned from the brief, five minute walk onto a third-party's unmarked property would have been disclosed to the defendants at the time the expert disclosures were made. Additionally, Starr has testified that the observations he made on April 2, 2008 do not form the basis for his opinions. Starr Aff. ¶ 11. Starr's opinions were already formed prior to April 2, 2008 and are based on the specific sources of information detailed in paragraph 4 of Starr's affidavit.

⁸ It is important to note that the defendants have not cited any Idaho law supporting the underlying rationale in their requests for sanctions. A recent Texas case noted that in the event a ruling prevented a litigant from properly presenting its case would constitute grounds for reversal. *Richmond Condominiums v. Skipworth Comm. Plumbing, Inc.*, 245 S.W.3d 646, 2008 Tex. App. LEXIS 963, *31 (February 7, 2008). The *Richmond Condominiums* Court found that sanctions must be just, directly related to the offensive conduct, and not excessive. *Id.*

Any trespass would have been unintentional. There were no signs. Schuster Aff. ¶ 4. There was no intent to trespass. *Id.* ¶ 12. Thus, the trial court should balance the culpabilities and equities given the specific facts in this case. On one hand, there is no prejudice to the defendants. On the other, the alleged trespassers did not trespass. Thus, the defendants' motion must be denied.

IV. THE SANCTIONS REQUESTED ARE INAPPROPRIATE.

The defendants request that all of Printcraft's experts be excluded from testifying at trial. The requested sanctions are inappropriate under Idaho law and should be denied by this Court.

Sanctions serve dual purposes of encouraging compliance with discovery and punishing misconduct. *Roe v. Doe*, 129 Idaho 663, 667, 931 P.2d 657, 661. Trial courts should generally attempt to satisfy the aim of encouragement before applying the more drastic punishment sanction. *Id.* The punishment should fit the crime and a trial court should not impose a drastic sanction that will prevent adjudication of a case on its merits except on the clearest showing that this course is required. *S. Idaho Prod. Credit Ass'n v. Astorquia*, 113 Idaho 526, 532, 746 P.2d 985, 991 (Donaldson, J., concurring). Justice Donaldson commented:

The trial judge must balance the equities by comparing the culpability of the disobedient party with the resulting prejudice to the innocent party in light of the twin aims of the sanction power. Only after applying this balancing test, the court should impose a sanction which will most substantially lead to the efficient administration of justice.

Id. The exclusion of witnesses and evidence is a severe sanction. *Roe*, 129 Idaho at 667, 931 P.2d at 661.

Here, Schuster and Starr did not trespass. See discussion *supra*. Schuster testified that there are no signs indicating who the owner of the property is. Schuster Aff. ¶ 4.

Schuster had no intention to trespass or violate the laws of the State of Idaho. *Id.* ¶ 12.

Thus, there was no culpability or bad intent on the part of Printcraft that would justify the requested sanction of excluding some or all of Printcraft's experts from testifying at trial. Such a sanction would prevent Printcraft from being able to present the merits of its case and would only encourage resolution of this matter on the bases of technicalities and procedural zealotry. The defendants have not been prejudiced and the Court should deny their motion.

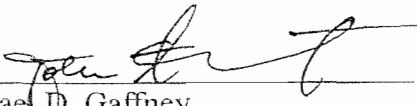
V. THE DEFENDANTS MISAPPLY RULE 45.

The defendants attempt to misconstrue Rule 45 to mean that *any* time an expert performs some sort of inspection that Rule 45 must be utilized. This is simply an incorrect understanding of the Rule. Rule 45(b) allows a party to subpoena a third party to allow the inspection and copying of documents, electronically stored information, or tangible things, or to permit inspection of premises. IDAHO R. CIV. P. 45(b)(2). Nothing in the rule *requires* that every time an expert witnesses reviews documents or information produced by a third party that it must be obtained by subpoena. The subpoena only requires that the third party either produce the information or present the Court with good cause for quashing the subpoena. If a third party is willing to cooperate and voluntarily produce information to litigants, then a subpoena is unnecessary. All that would be required of the parties is the production of the information upon which the expert witness relied through discovery.

CONCLUSION

Based on the foregoing, Printcraft respectfully requests that Sunnyside's motion for summary judgment be denied.

DATED: May 1, 2008.


Michael D. Gaffney
Lance J. Schuster
Jeffrey D. Brunson
John M. Avondet
Beard St. Clair Gaffney PA
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on May 1, 2008, I served a true and correct copy of the Plaintiff's Memorandum in Opposition to Discovery Sanctions on the following by the method of delivery designated below:

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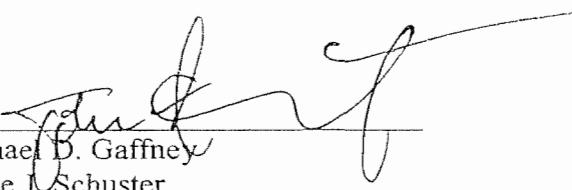
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DISTRICT 7TH JUDICIAL COURT
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**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
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SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation, SUNNYSIDE PARK
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Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

PLAINTIFF'S REPLY BRIEF IN
SUPPORT OF MOTIONS TO
RECONSIDER

The plaintiff, Printcraft Press, Inc. (Printcraft) submits the following reply brief in support of its motions to reconsider.

INTRODUCTION

The jury is the proper body to decide whether a material breach of contract has occurred. It is not the role of a district judge to take this important decision away from the jury. There are numerous issues of fact as to whether the alleged discharges by

Printcraft constitute a material breach. The undisputed testimony of Printcraft's experts is more than enough to get past summary judgment.

ARGUMENT

I. THERE ARE ISSUES OF FACT AS TO MATERIAL BREACH

Both decisions of the Court are silent as to material breach. Such an important element of contract law should not be disregarded by the Court. In its response to the motions to reconsider, Sunnyside argues that Printcraft has based its cause of action on an illegal act and that the Court should not uphold the transaction in any way. Sunnyside confuses formation issues with breach issues. Printcraft is not arguing that it contracted to discharge soft water brine into the septic system as suggested by Sunnyside. Rather, Printcraft argues that it is an intended beneficiary of the third party beneficiary agreement and that Sunnyside materially breached the third party beneficiary agreement by disconnecting Printcraft. The third party beneficiary agreement is not an illegal contract.

In response to Printcraft's argument, Sunnyside argues that the disconnection was not a material breach since Printcraft was discharging soft water brine in violation of the law. Even if the discharge of soft water brine was a breach of the third party beneficiary agreement, such a breach is not material and, therefore, termination of the contract (i.e. disconnection) was not justified or is at least an issue of fact for a jury. The following outline of the third party beneficiary agreement illustrates:

- Formation
 - Parties/Intended Beneficiary
 - Sunnyside – Third Party Beneficiary Agreement (Amended Compl. Ex. G)

- Printcraft - “This Agreement is made not only with the Representative in its individual capacity but also as the representative of and for the benefit of the present and future owners of or occupants of all and each of the properties, buildings, and other improvements which are now or may hereafter be served by the water supply systems and/or sewages systems of [Sunnyside] . . .”
(Amended Compl. Ex. G, § 1(a))

- Terms
 - “[Sunnyside] shall provide at all times for each of the buildings, and other improvements constructed in the areas and subdivisions served by the sewage systems of [Sunnyside] sewage services adequate for the safe and sanitary collection and disposal of all sewage from said buildings . . .” (Amended Compl. Ex. G, § 2(b))
- Material Breach by Sunnyside
 - Disconnection of Printcraft from the septic system December 15, 2006
- Affirmative Defense of Sunnyside
 - Breach by Printcraft due to alleged violation of law by Printcraft
 - Was the alleged breach material?
 - Question of fact for the jury to decide
 - Improperly decided as a matter of law by Judge St. Clair and incorporated into the Court’s recent summary judgment decision

Sunnyside concedes that the discharge of soft water brine was not within the realm of the parties' thinking. Response Br. at 5. Undisputedly, the formation of the third party beneficiary agreement did not hinge on the discharge of soft water brine. Printcraft's alleged discharge is a breach issue; not a formation issue. The illegality cases cited by Sunnyside are completely irrelevant to the analysis.¹ Printcraft does not attempt to benefit from its own wrong; rather, Printcraft seeks to recover for Sunnyside's egregious breach of contract.

Sunnyside argues that there is no dispute that Printcraft discharged water softener brine, hazardous wastes, processed water and excessive flows of wastewater in violation of IDAPA. Such an argument is false. There is no support in the record for Judge St. Clair's factual finding especially when every factual inference must be given to Printcraft. There has been no showing that hazardous materials or excessive flows were discharged. This Court recently acknowledged that "processed waste" does not have a clear meaning. Mem. Decision and Order, April 23, 2008 at 6. Printcraft could not have discharged excessive flows because Sunnyside failed to disclose the system limitations. Printcraft could not have exceeded the design flows because the design flows were not disclosed. Judge St. Clair's conclusory statements should not be ratified by this Court.

The only discharge that is arguably supported by the factual record is the discharge of soft water brine. However, such a discharge did not materially breach the contract. Sunnyside cites no law establishing that a violation of law constitutes a material breach. This Court should apply the black letter law which provides that before there can be a termination or rescission there must be a material breach of contract. Material breach

¹ Even if the Court were to buy into Sunnyside's illegality theory, the *Trees* case cited by Sunnyside actually supports Printcraft. The *Trees* case expressly recognized an exception to the illegality doctrine based on fraud. *Trees v. Kersey*, 138 Idaho 3, 9-10, 56 P.3d 765, 771-72 (2002).

is a question for the jury. The Court should not unilaterally determine that a violation law equals a material breach of contract.

Sunnyside did not bother addressing the two expert affidavits submitted by Printcraft establishing that the alleged discharges by Printcraft did not cause the system failure. Those affidavits, which were not in the record for the August 2007 decision, generate an issue of fact as to whether the alleged breach by Printcraft was material.

Sunnyside argues that the discharge is material since it carries with it criminal penalties.² However, District Seven's representative in charge of enforcement actions, testified that she had never been privy to an enforcement action for discharge of soft water brine and that it is only a concern if there is a clay soil type. *See Eager Dep. (In preparation)*. Eager testified that District Seven was not concerned whatsoever with the content of the discharge but rather was concerned about the amount of buildings hooked up to the system. *See Eager Dep. (In preparation)*. Further, review of the criminal statute provides that a violation must be willful or negligent. *See Idaho Code § 39-117(1)*. Sunnyside was not at risk to be prosecuted for discharge of soft water brine.

Clearly, the soft water brine allegation was nothing more than pretext to disconnect Printcraft because Sunnyside had hooked up too many industrial buildings to a system more adequately designed to handle the flows of a three bedroom residence. The first time Sunnyside specifically mentioned soft water brine was in a letter received December 15, 2006, the same day Sunnyside severed Printcraft's sewer connection. *Waters Aff. Ex Z.*³ It would be a gross miscarriage of justice to allow Sunnyside to get away with such conduct. Printcraft is not asking for this Court to make a legal

² When one really steps back and considers this argument it becomes absolutely ridiculous. To suggest that residents of Bonneville County with water softeners are criminals is laughable.

³ This affidavit was submitted to the Court on August 2, 2007.

determination that Sunnyside was not justified in disconnecting Printcraft as a matter of law. Printcraft simply asks that Court let the jury perform its job without unjustified interference. Thus, the Court should reconsider its previous rulings.

II. THERE ARE ISSUES OF FACT AS WHETHER IDAPA WAS VIOLATED.

In order to discharge water softener brine into a septic system it is the responsibility of the system's *designer* to acquire director approval from the Idaho Department of Environmental Quality (DEQ). The relevant portion of the Idaho Administrative Code governing Individual/Subsurface Sewage Disposal governs the design, construction, siting and abandonment of individual and subsurface sewage disposal systems. IDAPA 58.01.03.004.01. IDAPA provides that water softener brine, "cannot be discharged into any system unless that discharge is approved by the Director." *Id.* 58.01.03.004.03. By discharging into someone else's system, Printcraft violated none of these subsections by discharging water softener brine into the septic system.

Sunnyside's citation to a recent letter from State Attorney's Office does not change the applicability of this section. The letter expressly addresses Printcraft's current system and states that it is not violating IDAPA. Fuller Aff. Ex. E. Further, Sunnyside has never established that there was not director approval to discharge soft water brine into the system. Eager testified there was no concern if it was a gravelly soil type. *See* Eager Dep. (*In Preparation*). Thus, there was no violation of IDAPA by Printcraft. At a minimum there are issues of fact and this Court should reconsider its previous decisions.

III. THE ISSUE OF CONSTRUCTIVE FRAUD IS NOT BEFORE THE COURT.

Printcraft did not move to reconsider its constructive fraud claims. Sunnyside devotes half of its brief to an attempt to have the court *sua sponte* dismiss Printcraft's constructive fraud claims. Such an attempt to hijack Printcraft's motion should not be

allowed. Printcraft objects to Sunnyside's attempt and requests that the Court strike this portion of Sunnyside's brief. Sunnyside filed no motions and did not give Printcraft sufficient notice under the Rules of Civil Procedure. The rules of procedure were not followed and Printcraft was not given adequate time to respond to arguments.⁴

Sunnyside has moved for summary judgment on Printcraft's constructive fraud claims on at least two previous occasions, most recently on November 21, 2007. The "new evidence" Sunnyside refers to was certainly available at that time.⁵

If the Court is inclined to consider Sunnyside's third attempt at summary judgment on the construct fraud issue, Printcraft should be given adequate time to respond. Thus, the Court should not entertain Sunnyside's arguments until they are properly brought before the Court and Printcraft is given a fair opportunity to respond.⁶

CONCLUSION

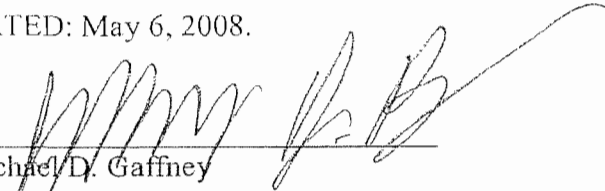
Based on the foregoing, Printcraft respectfully requests this Court to grant is Motions to Reconsider and vacate the August 31, 2007 ruling and reinstate Printcraft's Breach of Contract claim, vacate its April 23, 2008 ruling and allow a jury to decide Sunnyside's breach of contract claim, and strike the portion of Sunnyside's brief addressing constructive fraud.

⁴ Rule 7 of the Idaho Rules of Civil Procedure requires Sunnyside to give 14 days notice on motion to reconsider.

⁵ Sunnyside cites to facts occurring in 2006 as its "new evidence."

⁶ A cursory review of the argument establishes that Printcraft was an intended beneficiary of the third party beneficiary agreement and therefore the third prong of *Soward* applies to it.

DATED: May 6, 2008.



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CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on May 6, 2008, I served a true and correct copy of the Plaintiff's Reply Brief in Support of Motions to Reconsider on the following by the method of delivery designated below:

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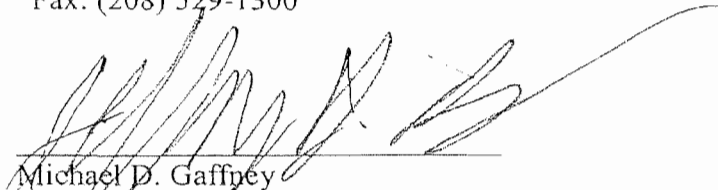
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BONNEVILLE COUNTY IDAHO

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**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

PRINCRAFT PRESS, INC. an Idaho
corporation,

Plaintiff/Counterdefendant,

vs.

SUNNYSIDE PARK UTILITIES, INC., an
Idaho corporation, SUNNYSIDE PARK
OWNERS ASSOCIATION, INC., an
Idaho corporation, and SUNNYSIDE
INDUSTRIAL AND PROFESSIONAL
PARK, LLC, an Idaho limited liability
company, DOYLE BECK, an individual,
KIRK WOLF, an individual,

Defendants/Counterclaimants.

Case No.: CV-06-7097

PLAINTIFF'S REPLY MEMORANDUM
IN SUPPORT OF MOTION TO AMEND
TO ALLEGE PUNITIVE DAMAGES

The plaintiff, Printcraft Press, Inc. (Printcraft) submits the following reply
memorandum in support of its Motion to Amend to Allege Punitive Damages.

FACTS

1. Travis Waters (Waters), Printcraft's president, started looking for a new building for Printcraft in early 2005. (Waters Aff. ¶ 3.)¹
2. Waters saw a sign at the entrance to Sunnyside Industrial and Professional Park (SIPP) advertising the name of the park as Sunnyside Industrial and Professional Park. (*Id.* ¶ 4.) The sign advertised water and sewer. (*Id.*)
3. The existence of electricity, water, sewer, parking, road access, and space for construction was of importance to Waters. (*See id.* ¶¶ 5-6.)
4. Waters personally reviewed the plat map and noted that the plat was titled "Sunnyside Industrial and Professional Park." (*Id.* ¶ 7.)
5. Waters met with Doyle Beck (Beck) and Kirk Woolf (Woolf) prior to the construction or occupancy of the building presently occupied by Printcraft. (*Id.* ¶ 9.)
6. Both Beck and Woolf represented to Printcraft that a sewer connection existed on the lot where Printcraft's building would be constructed. (*Id.*)
7. Blueprints were provided to Beck and Woolf by Printcraft. (*Id.*)
8. Beck and Woolf never disclosed prior to the construction of Printcraft's building that the septic system operating and serving the occupants of SIPP was permitted to have only two commercial buildings connected to the septic system. (*Id.* ¶ 10.) The defendants also failed to disclose that seven or eight buildings were connected to the SIPP septic system in violation of the defendants' septic permit. (*Id.* ¶ 10.)
9. The defendants never disclosed that the septic system only had one 1000 gallon tank or that the daily capacity was 500 gallons per day. (*Id.* ¶ 11.)

¹ This affidavit was submitted to the Court on December 5, 2007 in response to the defendants' Motion for Summary Judgment re: Constructive Fraud. The defendants' motion was subsequently denied by this Court.

10. The defendants never disclosed to Printcraft that District Seven had issued a letter to Beck and Woolf prohibiting any new connections to the septic system as of April 15, 2002. (*Id.* ¶ 12.)

11. The defendants never disclosed to Printcraft that the Third Party Beneficiary Utility Agreement or the Rules and Regulations (collectively the Agreement) existed or that the defendants relied upon them for administering the use of the septic system. (*Id.* ¶ 13.)

12. Waters testified that Printcraft relied upon the promise, representations, and actions undertaken by the defendants when it closed its then existing operations and move into SIPP. (*Id.* ¶ 16.) Printcraft sold equipment and incurred substantial expense in moving its business into SIPP. (*Id.*) Printcraft also ceased all other real estate purchasing opportunities with the goal of acquiring a new location for Printcraft. (*Id.*)

13. Printcraft understood that the septic system would be adequate for Printcraft's needs. (*Id.*) None of the defendants ever placed Printcraft on notice prior to Printcraft's move into SIPP of SIPP's grossly undersized and inadequate sewer system.

14. Had Printcraft learned at any time that defendants' septic system was severely restricted, grossly under capacity or simply poorly designed, Printcraft would not have moved from its original building into SIPP. (*Id.* ¶ 21.) Similarly, Printcraft would not have given up on other opportunities to purchase and lease real estate for its operations. (*Id.*)

15. The Court established as a matter of law that Printcraft is a third party beneficiary of the Agreement. (Mem Dec. Order, August 31, 2007.)

ARGUMENT

It is of paramount importance for the Court to bear in mind that this is merely the amendment stage about punitive damages. The evidentiary threshold for amending a complaint to include a claim for punitive damages is lower than the ultimate burden that a party must satisfy at trial. *See* IDAHO CODE ANN. § 6-1604(2). This burden is a preponderance and not the clear and convincing evidence standard enunciated in the statute. *Myers v. Workmen's Auto. Ins. Co.*, 140 Idaho 495, 501, 95 P.3d 977 (2004). The defendants give mere lip service to this guidance and frequently ignore it in an effort to dissuade the Court from granting Printcraft's motion. The Court should not be swayed by the defendants' arguments and should narrow its focus solely on whether Printcraft has a reasonable likelihood of proving fraud at trial.

The bulk of the defendants' arguments can be boiled down to a simple defense: there is no contractual privity between Printcraft and any of the defendants. The defendants' argument is misleading and absurd. The Agreement states that "this Agreement is made not only with the Representative in its individual capacity but also as the representative of and for the benefit of the present and future owners of or occupants of all and each of the properties, buildings, and other improvements which are now or may hereafter be served by the water supply systems and/or sewages systems of [Sunnyside] . . ." (Amended Compl. Ex. G, § 1(a)). The defendants, however, fail to recognize also that a duty to speak arises in situations where the parties do not deal on equal terms or where information to be conveyed is not already in possession of the other party. *Jones v. Maestas*, 108 Idaho 69, 696 P.2d 920 (Ct. App. 1985). Further, silence in circumstances where a prospective purchaser might be led to harmful conclusion is a form of representation. *Sorensen v. Adams*, 98 Idaho 708, 571 P.2d 769 (1977).

The arguments raised by the defendants are old, tired, and warmed over. The defendants have argued the lack of contractual privity between Printcraft and the defendants on two separate and previous occasions. The defendants also attempt an oblique effort to resurrect these “summary judgment” arguments for a third time in their response to Printcraft’s motion for reconsideration.² The Court has clearly found that the issue of “promises” made by the defendants “goes to the heart of the factual issues relating to a claim of constructive fraud. The evidence indicates that the Plaintiff assumed and believed that the “industrial park” would have adequate facilities for sewage and waste water. There is also a disputed issue whether Defendants were aware of Plaintiff’s sewage and waste water requirements.” (Order 4, December 26, 2007.)

Here, Printcraft has evidence that the defendants were under intense pressure from District Seven concerning the defendants’ failure to comply with the parameters of the septic permit. (Eager Dep. 142:19-143:4, December 7, 2007.) The pressure and limitations date back to April 15, 2002, over six years ago. The septic system at Sunnyside violates IDAPA because it is located in a pit. It could be flooded in the event of a major snow melt. The tanks in series requirements do not meet the IDAPA requirements for the said volume of the tanks as placed in series. The tanks were installed without inspection and there were other deficiencies to what was installed to the temporary system. (*Id.* 143:15-22.) Thus, there is a reasonable likelihood that Printcraft will be able to prove that at the time Waters met with the defendants, the defendants knew and understood that District Seven had imposed severe limitations on the septic system and that connecting another building to the septic system would violate District Seven’s limitations. Even if the nature of Printcraft’s business is set aside, the defendants

² Irrespective of the procedural defects in their attempts to do so.

should have informed Printcraft that they were not authorized to connect any other buildings within the industrial park to the septic system until an LSAS or other upgrade had been put in. There is a reasonable likelihood that Printcraft will be able to show that had it known that no new connections were permitted, that it would have looked elsewhere for a new location. (Waters Aff. ¶¶ 21-22.)

The defendants also seek to interpose a red herring into the litigation. Their entire argument about the September 2006 contract misleads the Court. The operative time frame where the fraud took place preceded Printcraft's occupancy of the building in SIPP. The defendants knew that the septic system was undersized at the time they met with Printcraft. (Waters Aff. ¶ 11.) The defendants knew that the septic system had too many connections at the time they initially met with Printcraft. (*Id.* ¶ 12.) It was the failure of the defendants to disclose the septic system's limitation before Printcraft decided to move its business that the Court must consider whether Printcraft has a reasonable likelihood of proving at trial. Any deleterious or negative effects suffered by Printcraft as a result of occupying a lot within SIPP runs directly back to the defendants' initial failure to disclose material information about the septic system.

There is a reasonable likelihood that Printcraft will be able to prove at trial that the defendants knew the nature of Printcraft's business. The defendants undisputedly knew that Printcraft engaged in the printing business. The defendants were able to inspect the blueprints and designs for the building prior to Printcraft constructing its building. (Waters Aff. ¶ 9.) The defendants expressly represented that there was a sewer connection for Printcraft despite the fact that there were already too many connections to the septic system. (*Id.*) Thus, there is a reasonable likelihood that Printcraft will be able to prove at trial that the defendants knew and understood the nature of Printcraft's

business and that the limitations about the septic system should have been provided to Printcraft long before Printcraft ever moved into the industrial park.

This is bolstered by the fact that at the time the defendants learned that Printcraft would occupy the premises within the industrial park the defendants knew that Printcraft would be an intended beneficiary of the Agreement and thereby entitled to the sewer and water services provided in that Agreement. The Court has previously ruled that as a matter of law Printcraft is an intended beneficiary of the Agreement. (Mem. Dec. & Order 11.) As an intended beneficiary Printcraft's rights are contractual rights as if it were a party to the Agreement. 9-41 *Corbin on Contracts* § 41.4 (2007). An intended beneficiary has the same rights as if the beneficiary were the promisee of an agreement. *Id.* As a beneficiary of the Agreement, Printcraft should have been placed on notice of the severe limitations on the septic system.

There is a reasonable likelihood that Printcraft will be able to establish that it relied on the information relayed to it in deciding to move its business to SIPP. Waters has testified that Printcraft believed that SIPP had all of the elements Printcraft deemed important for its business. (Waters Aff. ¶¶ 5, 16.) Of course, Printcraft's claims for fraud are based on omissions by the defendants concerning the limitations on the septic system. Waters has testified, and will testify at trial, that had the defendants been forthcoming and disclosed all of the limitations on the system that Printcraft would not have moved into the industrial park. (*Id.* ¶¶ 21-22.) The defendants have presented no evidence to dispute this testimony; indeed, the defendants cannot conjure up evidence to the contrary because none exists. As an intended beneficiary of the Agreement, Printcraft should have been told the limitations of the system. The defendants' failure to disclose the information led to Printcraft's reliance on the representations that there was a sufficient and adequate

septic system for Printcraft's needs. There is a reasonable likelihood that Printcraft will prevail at trial on this issue.

Similarly, the defendants' arguments concerning "justifiable reliance" have previously been rejected by this Court. (Order 3.) The Court clearly held that this is merely an issue that the jury will have to sort out and that it goes to the weight of the evidence on reliance. There is an equally reasonable probability that Printcraft will prevail on this issue at trial and the defendants have not presented the Court with any evidence that suggests that as an intended beneficiary, Printcraft was unreasonable in relying on the defendants' express representations that the septic system was sufficient for its business.

The defendants' arguments concerning damages are equally absurd. There is a reasonable probability that Printcraft will be able to show that it was damaged as a result of the defendants' fraudulent conduct. Waters, as president of the company, is qualified to testify what Printcraft's damages are as a result of the defendants' fraud. Printcraft has also retained David Smith and he has provided a detailed report listing the damages suffered by Printcraft as a result of the fraudulent scheme engaged in by the defendants. (Fuller Aff. Ex. F.)³ Smith's opinions have not been excluded by the Court. Thus, there is a reasonable likelihood that Printcraft will be able to prove damages under its fraud theories. As a result, Printcraft's motion should be granted.

There is a reasonable likelihood that Printcraft will be able to prove at trial that the defendants' engaged in a deceptive business practice dangerous to the public. The defendants mistakenly argue, and it is grossly misleading, that the only profit it would

³ The Court should note that the Exhibit attached to Mr. Fuller's affidavit are mere excerpts from the full report from David Smith. Printcraft has produced voluminous financial documents during the course of discovery that would lay the foundation for Printcraft's damages testimony at trial.

derive from its sales practices is the \$15/month from Printcraft. (Def. Mem. 23.) The defendants ignore the fundamental mechanism for deriving profits from the industrial park: the sale of lots to buyers. However, the deceptive business scheme is much greater than just the transaction with Printcraft. The scheme goes to the marketing of lots within SIPP. At the time Printcraft moved into SIPP neither the Third Party Beneficiary Utility Agreement nor the Rules and Regulations were recorded in Bonneville County. At the time the lots were marketed as industrial lots for industrial or commercial enterprises, there were seven or eight buildings connected to the septic system permitted only for one or two commercial buildings. (Waters Aff. ¶ 10.) At the time Printcraft moved into SIPP the septic system was under-capacity and only had a 1000 gallon tank with a daily capacity of 500 gallons. (*Id.* ¶ 11.) The facts are similar to *Umphrey* and the Court should grant Printcraft's motion.

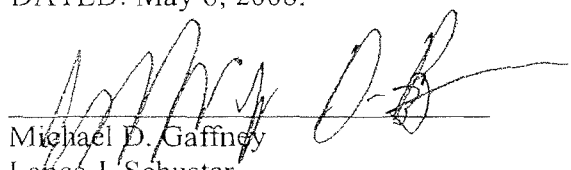
As to Kellye Eager, the Court is respectfully referred to footnote 8 in Printcraft's Memorandum in Support of Motion for Reconsideration for specific IDAPA sections the defendants violated when they allowed more connections to the septic system than they were permitted. The flows into the septic system are also calculated in Bob Starr's affidavit that was previously submitted to the Court.⁴

CONCLUSION

The defendants' arguments are without merit. The Court should grant Printcraft's Motion to Amend to Alleged Punitive Damages.

⁴ Additionally, and importantly, the Court is referred to Eric Nuttall's affidavit. In that affidavit Nuttall testifies that the salt water brine and the other alleged "hazardous materials" had no negative or deleterious effects on the septic system. Therefore, if the defendants wish to play the game of whose alleged violations were worse, the Court should note that the defendants' allowance of several additional connections to the septic system, and the corresponding increased flows, in violation of IDAPA, actually caused the failure of the system in June 2006. Clearly the more egregious violation of IDAPA lies with the defendants.

DATED: May 6, 2008.


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CERTIFICATE OF SERVICE

I certify I am a licensed attorney in the state of Idaho and on May 6, 2008, I served a true and correct copy of the Plaintiff's Reply Memorandum in Support of Motion to Amend to Allege Punitive Damages on the following by the method of delivery designated below:

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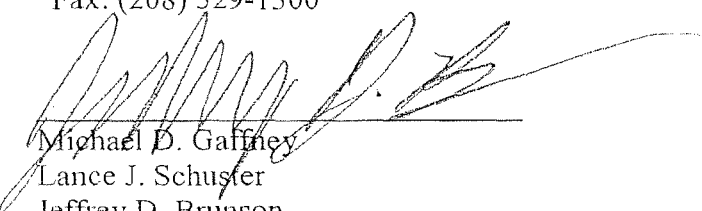
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Plaintiff's Reply Memorandum in Support of Motion to Amend to Allege Punitive Damages Page 10